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**ADMINISTRATION IN PUBLIC:  
ARENDT AND HABERMAS ON GOVERNMENT INITIATIVE**

by  
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A dissertation submitted to the Johns Hopkins University in conformity with the requirements for the degree of Doctor of Philosophy.

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## ABSTRACT

A central issue facing theorists of democratic government is the status of administrative tasks that escape, exceed, or do not win the attention of democratic publics. The dissertation argues that Hannah Arendt and Jurgen Habermas each provide an account of the appropriate place of administration that departs from traditional views of the institutions of separate powers, and contrasting their accounts helps to reveal unarticulated assumptions in contemporary debates about administrative discretion and participatory administration.

Arendt's work includes a notion of "good government" in which the identification and administration of tasks needed to "keep the world" is an important human endeavor that runs alongside political life that is driven by the non-instrumental values of dignity and freedom. Habermas suggests a notion of "government by law" in which law is the medium through which communicative power is translated into administrative power, so that politics and administration are reconciled as different moments in the same process of increasingly rational collective will-formation and implementation.

These approaches differ in important ways. First, while Habermas's account of the relationship between politics and administration is best characterized by the demand to limit administrative discretion to revise political decisions, Arendt's approach results in a demand for what might be called administrative discretion alongside political freedom. Second, where Habermas thinks administrators and political actors should be guided by different sorts of reasons, Arendt thinks the work of administrators and political actors should be held up to different standards.

This analysis holds implications for contemporary debates, including those about the non-delegation doctrine, participatory administration, and the “fait accompli.” Arendt’s perspective may offer a way to insist upon the links between the limits and authority of administrative power that are not described in terms of institutional boundaries or a proper reasoning process.

Advisor: Prof. Richard Flathman. Second Reader: Prof. Matthew Crenson.

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## **CHAPTER 1 - INTRODUCTION: THE POLITICAL CHALLENGE OF THE ADMINISTRATIVE STATE**

The increased size of all levels of government in the United States, and the proliferation of their tasks,<sup>1</sup> especially since the 1930's, along with the institutionalization of the notion that these governments can and should be harnessed for the deliberate purposes of the citizenry have presented political theorists with many crucial questions. One set of issues concerns a distinction between politics and administration.<sup>2</sup> Does such a distinction reflect different types of issues (principled or technical), different stages in a single process (decision and implementation), or a particular philosophical stance toward the relationship between government and citizen, freedom and instrumentalism? What difference does it make that citizen purposes and the administrative actions designed to carry them out often do not coincide with the borders that define their citizenship or role as participant? Does it matter when issues such as housing integration are candidates for public regulation whether one treats them as political or as administrative?

For both Hannah Arendt and Jurgen Habermas, the answer to the latter question is a firm "yes." Arendt argues that treating political issues administratively threatens freedom and the capacity for action, but she also claims that approaching administrative

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<sup>1</sup>See for instance James W. Fesler and Donald F. Kettl, The Politics of the Administrative Process (1996), who also point out that, relative to GNP, the size has not increased since the 1930's.

<sup>2</sup> The modern version of this question, which follows the specialization of government functions into legislative and executive, originated during the 17th century with thinkers like Locke who were trying to carve out a space for the demands of commerce. But for Wolin, the links extend to Greece: "It has been a long road from the philosophers of Plato to the expert commissions of Herbert Hoover" (Wolin 1960, 314).

issues as if they were political questions is somehow dangerously misleading. Likewise, Habermas insists that a failure to treat political and administrative questions separately, by confusing the types of validity claims at stake, will result in a lack of legitimacy. But their agreement on this broad stance belies a fundamental disagreement about how to characterize the relationship between politics and administration. Arendt's account of administration amounts to a grudging acceptance of government policy designed to "keep the world" that must be discreet in its relationship to political life. Habermas sees politics and administration bound together in a relationship of decision and implementation, so that politics is concerned to limit the discretion of administrators.

Through building the case for such a reading of their work, this project will explore the implications for politics of one's understanding of administration. Often neglected in the political theory literature, administration, whether construed as the daily implementing of law or as an endless agglomeration of physical and logistical challenges that precede and outlive political attention, forms an important facet of modern political culture and practice. Section 1 of this introduction will ask why this distinction between politics and administration? Section 2 will offer a rationale for considering these particular authors. Section 3 will then briefly describe the structure of the dissertation, which will include a contrast between Arendt and Habermas, and an analysis of debates around the non-delegation doctrine and about urban policy.

## **SECTION 1: POLITICS AND ADMINISTRATION IN THE LITERATURE**

The issue of the relationship between politics and administration has its conceptual

and institutional precursors in today's ideas of representation, individual freedom, and the separation of powers. The current configuration of concepts arose with the 17th century notion of representative government, and the institutionalization of the separation of powers in the 18th century. The development and dispersion of the idea of representative government grew with the insistence that the prerogative of the king and the assumption of the king's good intentions would no longer be accepted by those adversely affected by badly chosen policies, as in Locke's work. Those in power could not so easily get away with administering badly, and a measure of accountability began to accompany the office. Accordingly, officeholders began to be seen as representatives for things like interests rather than the body politic as a whole.

And this concern about the representative role of government emerged in combination with new ideas about individual freedom. These ideas, accompanying the rise of the commercial state, held that with sufficient prosperity and an enlightened government, the individual is free irrespective of the form of government. This position is most closely associated with Hume but we also see such ideas in Constant and others that republican or participatory notions are more suitable for simpler times, while representation is more suitable for the demand for individual freedom made by modern participants in the commercial realm. This is not just a question of "what is best administered is best" but an increasing sense that private freedom and private life are much more important than public freedom and participation, so that government tasks are increasingly left to designated individuals.

Together, these ideas about representation and individual freedom in a commercial

state helped shape the modern understanding of the separation of powers. In the horizon of representation of group interests, government was seen as a tool for society, and also as a dangerous threat to individual freedom. And the separation of power was meant to provide appropriate checks on the partisan use of government. In the context of the growth in government function and in the ability to dominate nature on a global scale, the issues deepened as the importance of a well-functioning government became ever more crucial. Pressure arose to provide an explanation for the need to bring the administration under control of representative mechanisms and for specific policies designed to achieve this goal. This in turn meant a more explicit account of the relationship between politics and administration.

In the context of writing devoted specifically to establishing and clarifying the field of public administration and delineating the responsibilities of administrators, the set of issues that largely control the debate today were established. With the first interventions by Woodrow Wilson and Max Weber, the distinctiveness of administration as a function of government, separate from politics and deserving of its own attention, was described.

Woodrow Wilson gave what is still a classic account of the distinction between politics and administration. According to him, administrators concern themselves with questions that are particular, technical, and directed to a specific purpose, while politicians attend to the very different activity of settling upon general principles. But administrators also deliver a crucial prerequisite for functioning constitutions by discovering the best arrangements for ensuring accountability to public opinion (Wilson 1970, 148). Wilson's characterization opposes the messiness of politics to the order of administration - where

politics can include hubris, self-interest, and impractical principles, administration properly excludes all of these. Administrators are free of the bad influences of both the election cycle and of their own interests. The most essential elements of administration supply clarity and responsibility.

Max Weber, who incidentally was writing in part while Wilson was president, offered a significantly chastened and pathos-ridden account of administration. For Weber, the functioning of administration results in an anonymity and irresponsibility that is precisely opposite of Wilson's claim that administrators enable accountability. For Weber, the firm and the bureaucracy are the home of individuals denied security and thereby freedom, and who are invested in the survival of the bureaucracy itself. So it deforms the individuals who, for Wilson, are charged with guarding and complementing the intent of the enlightened legislators. But where Wilson provided a never-to-be-achieved ideal, Weber gleaned characteristics of already-existing administration that points to an ideal-type. (Weber 1958) For Weber, these ideal-type characteristics lead to an aloofness that clouds facts and responsibility.<sup>3</sup> Wilson's civil service reforms, delivering some measure of security to agency employees, were supposed to help ensure the independence of the administrators. And this independence raises questions that are perhaps more crucial and

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<sup>3</sup> Martin Albrow points out that Weber did not see democracy and bureaucracy as opposite and mutually exclusive. Rather, he tried to show that "the specific nature of modern administration and the control of the apparatus of the modern state were conceptually distinct" (Albrow 1970, 46). Weber was concerned with how bureaucracy might be prevented from accumulating power, though, and he identified five mechanisms: collegiality, separation of powers, amateur administration, direct democracy, and representation. His privileging of the latter "owed more to his conviction that national greatness depended on finding able leaders than on any concern for democratic values" (Albrow 1970, 49).

discussed today: the representativeness of agency officials.

Another type of issue has been raised by theoreticians inspired by Foucault and his claims about the pervasiveness of power and the imperfect reflexivity of even the most egalitarian of politics, and the challenge they pose to any arguments for the neutrality of administration. Many authors have pointed to the specific way in which administration - the actual implementation or imposition of decisions - poses issues that are quite different than those originally addressed as political. For example, Nancy Fraser, in "The Struggle Over Needs," highlights the side effects of "procedures for translating politicized needs into administratable needs" (Fraser 1989, 174); and Jane Mansbridge, in "Using Power/Fighting Power," suggests that political compromises where justice is concerned require not merely administration, but also the encouragement of "oppositional discourses and oppositional cultures" that can remember and resist this bureaucratic coercion (Mansbridge 1996, 59).

Current debates around this distinction are very familiar, but most of it is found in the public administration literature. Some, like Dwight Waldo (1948), think it should be abandoned in light of the clear political function administrators play. He achieved a significant departure with his claim that such a distinction is not neutral but is itself a political move. Others, like Theodore Lowi (1979) and David Schoenbrod (1993), think the political role of administrators generates no end of confusion and loss of accountability, so that the distinction between political and administrative decisions must be clearly and definitively made for the sake of representation. They have agitated, somewhat successfully, for practices like opening rule-making by agencies to public

comment. In part, the dissertation argues for the importance of this distinction, in contrast to some calls to abandon it as either falsely conceived or as masking domination by the expert. To dismiss the distinction is an untenable denial of the conflicts we face: because no solution to any substantial problem can be effected without coercion, the administrative element of governing must be dealt with on its own terms. But also, on the most fundamental level, avoiding a fully instrumental notion of politics requires some version of such a distinction. But the solution Lowi and others pose, which is simply to reinstate and shore up the old version of the subservient administrator and the wise because well-chosen legislator, is not a viable option. So the dissertation asks what would constitute an acceptable version of the link between political life and administrative affairs.

Another area in which these issues have been largely overlooked with important consequences is in the literature around deliberative democratic theory. A specific issue that has not received very much attention is the functioning of deliberative democracy within the context of an administrative state. Much of the recent attention to deliberative democracy - its benefits, the procedures that are supposed to make it fair, the kinds of issues it is supposed to address - has not been joined by sufficient attention to the fact that deliberative mechanisms rely on an administrative state. In such a state, on one hand, deliberative decisions are well-translated into policy. But, on the other hand, following an insight that too much deliberation or participation is just as bad as none, deliberative mechanisms rely on an administrative state in which much policymaking happens with only superficial deliberation. This leads many deliberative theorists to give an awful lot of care to those situations in which they think it is appropriate to decide publicly, while

largely overlooking the implications of this other group of decisions.

For instance, what does it mean for deliberative democracy that much decisionmaking on clean air happens within the context of large delegations of power to agencies? Such policymaking structures have both good results - much cleaner air now than in the 1970's - and bad results - like permitting the avoidance of decisionmaking by legislators who can send contentious issues like fuel efficiency standards back to the agency level for further study. And what are the implications of the fact that one of the most successful recent programs for addressing class and race integration - the Gautreaux Assisted Housing Program - was largely designed on the back of a napkin in a restaurant and implemented with the deliberate intention of keeping public attention away? Thus, to the short list of questions presented in the first paragraph can be added the following new questions. How is this set of terms linked to the rise of representative government and commercial society? How should we think about the administrative power of government when deliberative majorities want something seemingly abhorrent (like racial and class segregation), or do not want something that obviously requires doing (like battling global warming)?

With these questions in mind, two central issues guide this project. The first is to rethink the notion of democratic sovereignty underlying deliberative approaches, given that they rely on an administrative state. By democratic sovereignty is meant the version of the Kantian/ Rousseauan problematic that has come down to the present in the belief that legitimacy arises when an appropriate political or general will is implemented. Given the kind of dependence upon administrative power this section has highlighted, thinking of



administrative policy in terms of sovereignty introduces questions about the risks of extending the same claims to non-deliberative decisions. The second issue is to consider the implications of this analysis for the ethics of policy design and implementation. Given the prominence of non-deliberative decisions, objections to specific policies or programs become as important or more important than upfront deliberation in gauging the justness of the actual policy outcomes. For this reason policy design factors like an institutional recognition of objections to policies, and building in flexibility or reversibility, become crucial to ensuring legitimacy.

## **SECTION 2: ARENDT AND HABERMAS**

Through a study of the work of Hannah Arendt and Jurgen Habermas, this dissertation explores the intersection of these sets of questions. Arendt and Habermas both offer accounts of the relationship between politics and administration that straddle discussions of deliberative democracy and civil society, and challenge standard characterizations of policy implementation. Both reject traditional pluralist accounts of the relationship between politics and administration, in which legitimacy is conferred on administrative acts through the aggregation of individual preferences, but they differ on what might constitute a more suitable account of administration by government.

With regard to Arendt, though much has been written about her theory of politics, no work of which I am aware pays direct attention to her theory of administration. Arendt's distinction between politics and administration has generated much controversy among both theorists of politics and practitioners of public administration. But critics and

supporters alike often assume that Arendt holds a monolithic view of administration. This essay brings together Arendt's various statements on government action - positive ones (like those in "The Cold War and the West"), pragmatic ones (like On Revolution and her late interviews), and negative ones (like those of The Origins of Totalitarianism) - in order to illuminate her multifaceted understanding of such action. By authors who pay attention, on the margins, to Arendt's views of administration they are either disregarded or cited as insurmountable flaws.

With regard to Habermas, most of his earlier work concerned the relationship of politics to an administrative subsystem that threatened the integrity of the lifeworld. In his more recent work, however, he has given an explicit theory of administration as a crucial component to democratic legitimacy that has yet to be addressed fully in the secondary literature. In this latter picture, administrators implement decisions that were guided by an anonymous subject. Some, like Bohman (1996) think this displaces democracy, especially the democratic participation that can occur around agencies. But the new picture of administration in Habermas's recent work is an abstract conception in which political questions can arise at any moment. The implications of this claim for his own focus on the need to identify decision for validity will be addressed in Chapter 3.

The differences between Arendt and Habermas have most often, in the secondary literature, been characterized in terms of their notions of the public sphere, and whether they agree or disagree that the public sphere is oriented toward consensus. If the public sphere could indeed produce or at least approximate consensus, presumably, the amount of coercion required by administration would be reduced. Habermas's early essay,

“Hannah Arendt’s Communications Concept of Power,” outlined his own understanding of the differences between himself and Arendt on this question. Benhabib argues that Arendt overlooks the fact that the question about what is political and what is administrative is itself a political question. She reaches this conclusion in part through a comparison to Habermas’s similar mistake (Benhabib 1992). Jane Mansbridge thinks that Arendt and Habermas are both misguided on this point (Mansbridge 1996). But Arendt’s work continues to defy a contrast in the terms demanded by Habermas’s work.

It was hard to put [Arendt] neatly into the camp of Habermas against an aesthetic politics, yet it was impossible to deny her affinities with Habermas. Arendt helped theorists such as Honig develop a deconstructive approach to politics that was not apolitical. Conversely, she helped Habermasian liberal theorists such as Benhabib find a clearer place for politics and gender and difference within an associationist approach (Calhoun and McGowan 1997, 7).

And other authors have contrasted them in different ways. For example, Mary Dietz thinks that one of the most crucial debates in feminism, between Benhabib and Honig, can be traced back to a contrast between Arendt and Habermas on the question of the status of agonistic and associationist approaches to politics and administration (Dietz 1995). In contrast, Honig argues that agonism and associationism are not two distinct types of public space in Arendt’s work, but are joined together in a model of identity formation shown in “(t)he emphasis of agonistic feminism on the development of individuality as an effect of participation in concerted political action...” (Honig 1995,160). And James Tully characterizes the contrast between Arendt and Habermas in terms of the very different efforts to push limits and enforce limits in governance (Tully 1999).

Among theorists of public administration and practitioners, however, Habermas’s

work has drawn more attention than Arendt's, perhaps because he more directly engages the debates that stir those involved in policymaking and public administration. His attention to the practical problems of speech in the public sphere, contained in his theory of communicative action, has been mined by those trying to bring deliberative practices to the design and implementation of public policy. Critical administrative studies, according to Schnieder and Ingram (1997), apply these insights to the critique of the methods employed by officials of the administrative state. From an even more practical angle, some authors, like John Forester (1985, 1993), have considered the implications of Habermas's "ideal speech act" for the practice of public officials designing policy, and for the goal of leveling the playing field that is often distorted through expert speech. But Arendt's work has not been entirely overlooked in this field. Her insistence upon the "agonistic" aspect of public interactions, the sense in which the *telos* of deliberation is not agreement but participation, has been suggested by Camilla Stivers (1996) as a better approach than Habermas's focus on the ideal speech situation.

### **SECTION 3: OVERVIEW**

The analysis of the dissertation begins with a close look at the role of government administrative power in each author's work. The approach in these first two chapters is to allow Arendt's and Habermas's views to emerge using their own terms. The chapters consider important criticisms of each author's work, but the primary purpose of the chapters is to present a sympathetic account of each approach.

Chapter 2 argues that Arendt's notion of administration is significantly more

complex than is generally recognized: rather than lying on a continuum with totalitarian bureaucracy, centralized administration in a modern society serves as an important counterpart and irritant to political action. In contrast to much secondary literature, the chapter argues that Arendt's account of bureaucracy, in The Origins of Totalitarianism, as a force that subverts "reality" and manages to stifle administration as well as action, requires a conceptual distinction between bureaucracy and administration as government practices. The problems generated by administrative centralization are not the same as those that become evident when totalitarianism's "principle of motion" takes hold.

To develop the implications of this conceptual distinction between bureaucracy and administration the chapter argues that her writing permits a second of the relationship between politics and administration - one that she calls "good government" - that stresses the interaction between these realms brought about both by the interference of political opinion with the implementation of administrative solutions, and by the stubbornness of administrative issues even when subjected to public deliberation. This perspective sees the relationship between self and citizen as the site of an unpredictable mediation between interest and opinion that demands modesty on the part of both government and political actors.

The chapter then explores three aspects of Arendt's account of "good government." The first aspect of Arendt's account of good government is that administration possesses independent authority that comes from its responsibility for traditional government tasks, though her account of this authority is different than the authority to implement a will that is identified by representative government. The second

element is a “right to be a participator” that asserts the importance of associations in implementation rather than only in identifying laws that will limit government. The third element is a notion of dissent according to which consent does not extend to specific policies, so that government officials are compelled to limit claims on behalf of their programs to their potential for bringing improvement rather than progress.

An important result of this account of good government is that public administrators often have the most prominent role in dealing with dissent. Since opinions are, by definition, singular and not representable, they are often not heard until policies are being implemented and the particular becomes visible. Arendt’s work suggests that, around certain issues that cannot be identified in advance, opinions reveal the reality of the world in the course of discussions of the implementation, not just the writing, of law. In contrast to representative government’s view of administration as set apart from political contest, Arendt’s understanding of “good government” suggests a political role for administration that is not often appreciated by critics of Arendt’s work.

Chapter 3 turns to Habermas’s work and considers how his notion of administration has evolved from his earliest work to his most recent. The details of this evolution help in understanding the challenges Habermas thinks a theory of constitutional government must overcome if it is to justify administrative coercion. First, the section will look at Habermas’s account, in The Structural Transformation of the Public Sphere, of the emergence and deterioration of the administrative activities of the liberal state. The demise of the critical public sphere signals, for Habermas, the cooptation of administrative power by partial interests disguised as neutral rules, moral or economic, and illustrates the

need to keep public administration tethered to a critical public rather than what Habermas calls a manipulative public. Second, the section will consider Habermas's critique of the welfare state, in Legitimation Crisis, that goes too far to get rid of partial interests by relying upon administrative experts and excluding participation. Habermas argues that this tendency is best addressed through the critical perspective provided by communicative ethics and the notions of the generalizable interest and the ideal speech situation.

The chapter then turns to Habermas's most recent account, in Between Facts and Norms, of administrative power as an essential element in the legitimacy of "government by law." Habermas claims that this version of administrative power addresses a crucial lack in his earlier work by providing an account of how administrative coercion can be legitimate in a democracy. At the center of this approach is an analogy between integration through law and linguistic integration. In addition, the chapter argues that "government by law" offers a crucial revision to the traditional understanding of separate powers by arguing that "administration" must be understood abstractly rather than institutionally. The abstract account of separate powers recognizes that the appropriate place and time for the different kinds of arguments - legislative, judicial, and implementing - may or may not coincide with institutional boundaries. In other words, in Habermas's abstract version of separate powers, the communicative model provides the basis for institutional separations, rather than the other way around. So dogmatic policing of institutional boundaries must not be permitted to interfere with the argumentative process. The result of Habermas's approach to administrative power is that executive authority can be made benign enough to be applied overseas through an "international domestic policy."

The next step in the analysis is to contrast these two accounts, especially the very different ways they understand administrative authority. Chapter 4 considers how these accounts, both somewhat distinctive in the realm of writing about administrative power, illuminate two important questions that are often raised in the context of current debates. First, to what extent should administrators, with their expert authority, exercise discretion and independent judgement? Section 1 argues that Habermas's account of the relationship between politics and administration is best characterized by the demand to limit administrative discretion to revise political decisions, while Arendt's approach results in a demand for what might be called administrative discretion alongside political freedom. Because Arendt objects to the notion of freedom that is implicit in the idea of sovereignty, the justification of administrative acts through policing the transition from decision to implementation becomes problematic from her perspective.

Second, what criteria or forms of judgement should guide political actors and is this different than what should guide administrators? Section 2 suggests that their responses take different shapes: Habermas thinks administrators and political actors should be guided by different sorts of reasons, while Arendt thinks the work of administrators and political actors should be held up to different standards. This contrast relates to a crucial difference in how the two authors conceptualize the relationship between politics and administration - where Habermas views the two as different moments in the same political process of increasingly rational decisionmaking and implementation, Arendt views the attempt to "keep the world" through administrative acts as an important human endeavor that runs alongside political life. Habermas, with his insistence that government by law



requires a hierarchy of reasons that preserves the intent of political decisionmakers, even with the corrections he provides in the form of an abstract understanding of implementation, largely subverts the question about the continuation of political contest through post-decisional dissent that motivates much of Arendt's later writing.

The contrasting responses of the previous chapter offer a way to rethink current controversies that will be considered in Chapter 5. The first section takes up the debate over the non-delegation doctrine, whose outlines often shape discussions of administrative power. The section considers arguments on both sides of the debate, and argues that both sides reflect the focus on limiting discretion that is found in Habermas's approach. Though they describe the need for limiting discretion in different terms, both sides think that delimiting the reach of administration increases its authority by granting it legitimacy within the larger system of sovereign collective will-formation and implementation. The chapter will explain this claim further and consider its implications for the profession of public administration.

Section 2 considers the issues posed by the use of "fait accompli" in public life. Such acts, characterized by obscurity and irreversibility, are often associated with the machinations of administrators. But if, as in Arendt's notion of administrative "discreetness," decision does not mark the distinction between the political and the administrative - and the justification for administrative coercion - then the significance of "fait accompli" must be reconsidered. From the perspective of discreet administration, this section will argue, administrative acts can be recognized as *nothing but "fait accompli,"* and thus reducing their status can enhance the possibility that implementation

can be subject to political standards.

This analysis of Arendt's and Habermas's views of the relationship between politics and administration allows a consideration of the implications of non-sovereign view of administrative power. What follows from the claim that "administrative" describes a set of tasks or an aspect of living together that must be addressed alongside the experience of political freedom? One result is that debates over the non-delegation doctrine and the "fait accompli" take on a different significance. Such a perspective may offer a way to insist upon the limits of administrative power that are not described in terms of institutional boundaries or a proper reasoning process.

## CHAPTER 2- REREADING HANNAH ARENDT ON BUREAUCRACY, ADMINISTRATION, AND ASSOCIATIONS

Hannah Arendt often presented Montesquieu's description of political freedom - "being able to do what one ought to will" - as deeply influential in her own understanding of politics.<sup>1</sup> Accompanied by her much discussed notion of "action in concert" it is clear that Arendt views this freedom as importantly related to the plurality and limitations of the world. But she also maintained an ambivalent stance towards the moment when a society actually does what it has determined it should through government action. In one sense, her stance reflects important respect for the eternal question of the reconciliation of freedom and coercion; understanding the source and nature of her ambivalence can point to reasons for insisting on the general priority of political to administrative issues. In another sense, however, Arendt's view arises out of specific observations about the results that can accrue when particular governmental formations act directly on individuals without an intervening concern for political freedom. She began her reflections with the ruin of governmental and social systems in the wake of World War II, and carried these concerns, through a critique of modernity, into an argument for a distinction between political and administrative ways of approaching issues in constitutional systems.

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<sup>1</sup> See Arendt 1958b, 467, (future references to this title are abbreviated as OT); Arendt 1977b, 161, (future references to this title are abbreviated as BPF); Arendt 1969, 183, (future references to this title are abbreviated as CR); and Arendt 1978, 199, (future references to this title are abbreviated as LMII). The passage she references is the following.

...It is true that in democracies the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid he would no longer be possessed of liberty because all his fellow-citizens would have the same power (Montesquieu 1949, 150).

Many have objected to such a distinction, but others have found her thought productive in their search for government action that pays sufficient attention to the complexity of public issues and the dignity of those involved. Most authors who have criticized Arendt's treatment of administration have focused almost exclusively on the negative move of separating administrative issues from political ones, conflating her distinction with a claim that administrative issues contaminate politics.<sup>2</sup> Those who have found Arendt's work helpful have turned to concepts like "agonistic democracy" and to the way she preserves the dignity and memory of dissent.<sup>3</sup> Both sets of insight are valuable for understanding Arendt's thought and the dilemmas of living together.

However, this chapter will direct specific attention to positive aspects of Arendt's notion of administration. First, it will set up the issue by briefly presenting two very different ways in which the relationship between politics and administration appears in her work - as very separate spheres with little interaction, and as intertwined and interdependent within a practice of "good government." Then, in the second section, it will argue that the former, aloof type of administration characterizes government under totalitarian or other systems in which policy content is derived from systemic logic rather than the reality of the world. In The Origins of Totalitarianism, Arendt recounts the rise

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<sup>2</sup> Examples are numerous but include Lasch (1983), Bohman (1996), Pitkin (1998), and Connolly ((1997). An exception to this emerges in works like Mark Reinhardt The Art of Being Free, who finds in Arendt's description of the relation between politics and freedom certain resources for theorizing the importance of groups like ACT UP. But Reinhardt rightly calls his approach an "ironically Arendtian political response" (Reinhardt 1997, 149) because he provides severe correctives to her approach to "social" questions and he, too, refers to her strategy as one of "purifying politics." Other such examples include Honig (1993, 1995), Curtis (1997), and Orlie (1995).

<sup>3</sup>Honig (1993, 1995), Stivers (1996), and Villa (1996) among others have turned to her idea of "agonistic democracy," while Disch (1994) provides a fine example of the way Arendt allows an appreciation of dissent.

of governments that banished not only action but also the public administrative element of good government that looks to the world for the issues it addresses. The third section will turn to this administrative element of “good government,” and to the special problems arising from the centralization that is required because “the world must be kept.”

## **SECTION 1: THE POLITICAL AND ADMINISTRATIVE ELEMENTS OF GOOD GOVERNMENT**

Consider the following very different formulations of the relationship between administration and politics - one in which administration and politics have little interaction and another she names “good government” in which administration and politics are intertwined - both of which are found in Arendt’s work. Under bureaucratic administration, administration and politics have little or no interaction, and they are related only in a negative way. While the administrative concerns itself with the demands of necessity as reflected by the interests of the household as a unit, politics provides a space for freedom in which opinions reveal a distinctive individual who had been defined by her or his sameness within the household. In The Human Condition, the administrative is associated with needs that used to be, for example in ancient Greece, addressed in the household. In contrast to these shared concerns that arise from the common project of the maintenance of life, the *Polis* was the domain of the achievement of freedom, a domain that required courage in addition to the overcoming of necessity (Arendt 1958a, 36).<sup>4</sup> Entering the political sphere meant entering a “fiercely agonal” sphere where human

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<sup>4</sup> Future references to this title are abbreviated as HC.

uniqueness was the supreme value and each participant struggled to distinguish herself or himself (HC, 41). In On Revolution her insistence on this separation leads to an antipathy to “social questions” that demand political resources be applied to questions of need. As many have pointed out, the distinctiveness one can achieve in the political realm requires a separate private realm that provides shelter, respite, and strength.

An important element in this first formulation of the strict separation of these realms is that truth respects the boundaries between them. While exchange of opinion in the political realm is resistant to truth claims, the efforts to address necessity in the administrative realm harness rational truths about what works best. At several points in her work, Arendt asserts the transparency of administrative issues relative to political questions. With the advent of modernity the transparency of household concerns deepened as technological advances raised the hope that administrative questions actually could be solved rather than simply deferred or contained. In 1962, in "The Cold War and the West," Arendt expresses her belief that "in a not too distant future, we shall be able to deal with all economic matters on technical and scientific grounds, outside all political considerations" (Arendt 1962, 17).<sup>5</sup> In addition, she points to Lenin as an example of a salutary attempt to distinguish these sets of tasks and their respective amenability to rational truth. She voices her approval of Lenin's short-lived recommendation "Electrification plus *soviets*," in which administrative tasks are separated from the political task of the “rise of freedom through a new form of government,” the soviets (Arendt

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<sup>5</sup> Future references to this title are abbreviated CWW.

1977a, 65).<sup>6</sup> The problem of poverty, arising from the demands of the body, would be solved by politically neutral technical means, i.e. "rational, non-ideological economic development of the country" (OR, 66), administered by "experts" (OR, 91).

The problem with the way Lenin's formula was applied, according to Arendt, is not that political and administrative tasks were separated, but that government officials tried to achieve mastery and apply rational truths to the political realm as well. As in the Polis, political questions, while submitted to the experiment of the *soviets*, did not lend themselves to solution. Here, the paradox of revolution - the pathos of newness accompanied by newfound conservatism - manifests itself (OR, 41; CR, 78). The inability of the American Revolution to "find its appropriate institution" (OR, 280) also points to the elusiveness or inappropriateness of solution and mastery in the political realm. Action in the modern world, where it manages to survive, is still characterized by its fundamental unpredictability, irreversibility, and anonymity (HC, 220). Where administration seeks a reduction of difference and unpredictability, politics requires plurality and emerges from the human capacity for uniqueness and innovation.

But it is just as misguided, according to Arendt, for administrative issues to be treated as political ones. Arendt asserts that a program that seeks to rid the world of poverty seeks to liberate people "not *qua* prospective citizens but *qua* *malheureux*" (OR, 111). As long as such a program is strictly administrative and does not function politically it maintains a positive force, but the politicization of such a program inevitably "leads into terror" (OR, 112). Similarly, the awkward attempt by modern governments to reduce

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<sup>6</sup> Future references to this title are abbreviated OR.

politics to “national housekeeping” reflects the inappropriate application of the authority of rational truth to the political realm.

The obvious problems with this first formulation are that it denies the manifest (not the merely potential) citizenship of recipients, and views administration as a neutral undertaking. The self-interest and needs of public policy recipients, for example, form the basis for the noncontingent rational truths of administrative experts who are truth-tellers. Because these truths are assumed to fully and noncontingently describe the recipients, the potential that the latter might act autonomously and perhaps surprisingly is rejected. The world, the inter-est that can form a community of interest and a ground for action, does not extend between the recipients of public policy to those acting in the political sphere. In some places, it seems as if Arendt reduces the social question to the existence of poverty and claims that this "state of constant want and acute misery whose ignominy consists in its dehumanizing force ... puts men under the absolute dictate of their bodies" (OR, 60). Thus, the possibility of acting *qua* citizen is deferred until such time as poverty is abolished. As Arendt writes, "liberation from necessity, because of its urgency, will always take precedence over the building of freedom" (OR, 112). This position can lead to a diminished view of the recipient of public assistance and resentment of those who assert their identity as citizens or refuse to be fully defined by poverty, for example by refusing housing grants that will threaten their culture. As Wolin argues, Arendt underestimates "the capacity of ordinary citizens to act in a genuinely political way"



(Wolin 1994, 299).<sup>7</sup>

But her writing permits a second view of the relationship between politics and administration - one that she calls "good government" - that stresses the interaction between these realms brought about both by the interference of political opinion with the implementation of administrative solutions, and by the stubbornness of administrative issues even when subjected to public deliberation. This perspective sees the relationship between self and citizen as the site of an unpredictable mediation between interest and opinion that demands modesty on the part of both government and political actors. Along this second view, public issues are not neatly distinguished as either political or administrative, but are instead understood as having two sides that implicate and sometimes defy each other, resulting in a mode of judgement that is unique to neither administrators nor political actors.

For example, Arendt often points to the way that housing policy can be at the center of conflict between those who wish to approach the provision of decent housing as a self-evident goal and those who resist the administrative measures meant to address this goal whether they share the goal or not. With respect to the "housing problem" she explained,

the social problem is certainly adequate housing. But the question of whether this adequate housing means integration or not is *certainly* a political question. With every one of these questions, there is a double face. And one of these faces should

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<sup>7</sup> Similarly, Hanna Pitkin points to Arendt's statement in The Human Condition that all of the activities of the human realm "are within the range of every human being" (Pitkin 1994, 276), but she doubts Arendt's commitment to this idea given her statements about the determining nature of the social (Pitkin 1995, 53). See also Pitkin, 1998.

not be subject to debate (Arendt 1979, 318).<sup>8</sup>

At first glance, it appears that Arendt is simply making a claim about the epistemological status of administrative issues. Where a group must debate the political side of an issue to arrive at some common understanding, the administrative side - that which "we can figure out with certainty" (OHA, 317) - requires a process of scientific discovery rather than debate. For example, she declares "if it's a question of how many square feet every human being needs in order to be able to breathe and to live a decent life, this is something which we really can figure out" (OHA, 319).

But sometimes there is no "right measure" because neither debate nor research can find a solution amenable to all, and in these cases neither the political actor nor the administrator can claim authority for their methods. For example, she writes that "the very grave social problems which the big cities pose" are beyond debate by virtue of the irreconcilable interests at stake. They cannot be solved by debate, nor by the favorite tool of the administrator - "research committees." Where interests are at stake, the public realm of freedom can only suffer as the "basic irreconcilability of interests [is] dangerously exposed" (CR, 173, 225). Just as the French revolution stumbled under the weight of unfulfillable needs, so the political process in the United States may stagger to a halt if its purpose is understood as finding ways to reconcile competing interests. Such expectations lead a group or nation to push the limits of power, of the ability of members to act in concert.

In such cases, both political and administrative actors suffer the interventions of

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<sup>8</sup> Future references to this title are abbreviated OHA.

the other. On one hand, the course of political action suffers from the stubbornness of administrative arguments when the material manifestations of past decisions limit the scope of what seems possible. In the case of adequate housing, past decisions, like government-imposed segregation of public housing, have created a situation in which the politically-divisive policy of integration seems to be a necessary step to providing the administrative goals of decent accommodation and equal education. She contrasts the efforts of political actors on behalf of civil rights in the south versus the north. Whereas the demonstrations

were successful in eliminating discriminatory laws and ordinances in the south, they proved utter failures and became counterproductive when they encountered the social conditions in the large urban centers - the stark needs of the black ghettos on the one side, the overriding interests of white lower-income groups in respect to housing and education on the other (CR, 173).

Because the patterns of distribution of housing and education resources generated clashes of interest, when political deliberators in the north tried to address such issues solely on political terms, they found it very difficult. But Arendt does not stop on this realist note - a similar dynamic is at work on the administrative side and provides hope for those concerned with political freedom.

For, on the other hand, the implementation of administrative goals like adequate housing suffer political interventions when opinions about policies carry meanings that exceed the administrative rationale for them. Political attention often turns to other matters that do not easily appear through research. In the case of housing, for example, political actors reacting to urban renewal policies argued that their "love [for] their neighborhood" should override administrative housing standards that would have required

them to move (OHA, 318). The status of the "right measures" as right is called into question by the existence of the political question on the other side. Thus, the scientific nature of administrative questions does not protect them from the intrusion of political questions. Appreciating the importance of opinion allows one to better understand those issues that do not lend themselves to administrative resolution because people see their own life choices reflected in them and will not let them out of their reach.

Consequently, Arendt places us in the uncomfortable position of recognizing these issues as residing outside the spheres of both administration and politics.<sup>9</sup> If she thinks that administrative issues are those about which one can have certainty, and which have therefore no particular place in discussion, she also argues that many issues that come up in the administrative moment are clashes of interest about which no certain correct choice can be made, and which require reference to the reality of the world, a reality only

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<sup>9</sup>Some authors have claimed that they exemplify the problems Arendt's distinction runs into when placed in a real world context. For example, Christopher Lasch claims that Arendt's writings on Little Rock revealed how this distinction leads to "dubious conclusions" (Lasch 1983, viii). John Sitton writes that Arendt's distinction simply cannot hold up, and provides as evidence the claim that Arendt has already inserted a political question into the administrative side by using the word "decent" in her formulation of an obvious administrative fact (Sitton 1994, 323). On one hand, the decades of debate over the meaning of "decent, safe, and sanitary dwellings" as called for by the United States Housing Act of 1937 support this assertion. But, on the other hand, Arendt does not claim that the two realms are separate. She writes, "[i]n the modern world, the two realms indeed constantly flow into each other like waves in the never-resting stream of the life process itself" (HC, 33). Other authors, such as James Miller, have asserted that her distinction promotes passivity on the part of politicians (Miller 1979, 201). Still others try to resolve these difficulties by interpreting her position as calling narrowly for the absence of debate in situations where debate clearly would have negative results such as at nuclear power plants (Nye 1994, 178); or as based on the notion that principles, rather than social issues, guide our actions in the political realm and that, while these principles form the content of properly political discussion, they do not necessarily preclude discussion of social issues (Biskowski 1993, 878). Eli Zaretsky points out that Arendt's comments on a laboring society should be read in the context of contemporary views that "it was becoming possible to transcend labor's historically encumbering role." He argues that such contextualization "preserves the nonteleological dimension of Arendt's concept of action while repudiating her deeply problematic disdain for 'labor' and 'social housekeeping'" (Zaretsky 1997, 212). Hinchman and Hinchman see her distinction as one of form and content (Hinchman and Hinchman 1994, 160). Benhabib argues that Arendt overlooks the fact that the question about what is political and what is administrative is itself a political question (Benhabib 1996, 156).

accessible through political acting. And if she argues that political questions draw upon a sense of freedom and self-government, she also recognizes that they run up against irreconcilable interests that can be, not solved, but arbitrated by government action. What is the significance of these seemingly contradictory stances?<sup>10</sup>

Benhabib considers Arendt's claim that social issues have two sides - a political side and an administrative side - as indicative of her insistence that whether the content of the issue concerns freedom or necessity is not itself a subject of debate. According to Benhabib, Arendt thinks that associations are not properly involved in such questions, leaving political actors with little or nothing to talk about in public.<sup>11</sup> Benhabib sees a reliance on experts as Arendt's primary stance on such questions (Benhabib 1996, 156). For Benhabib, this causes problems for Arendt's central contribution, which is a sense of the importance of associational life to a public sphere that properly legitimates public acts (Benhabib 1996, 202).

While many critics agree with Benhabib that this is a failure in Arendt's thought, this chapter will point to the flexibility of the distinction and to Arendt's practical

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<sup>10</sup>I have presented this story about the different formulations of the administrative/ political divide one can find in Arendt's writing as if the two accounts exist side-by-side. One possibility I have explored but have not resolved is whether these two accounts represent a shift in Arendt's thinking on these issues. As far as I can tell, all of her most optimistic statements about the technological capacity to end poverty occur in her early writings, as do most of her strongest views about the separation of the spheres and the glorious, agonial nature of politics. One can detect increasing attention in her later works to the impact social problems have on political participation, including speculation about income supports in "Public Rights and Private Interests," and more appreciation of the many-sidedness of social issues. Perhaps Wolin is correct in his judgement that Arendt was "radicalized" by the '60's (Wolin 1994, 290). In any case, the two accounts I have culled from Arendt's writings represent two ways of formulating an issue that persists beyond her work - the relationship between government action and freedom.

<sup>11</sup> Reinhardt, for example, recognizes that Arendt "repeatedly insisted that action is about the realities confronting actors, that it cannot be political if it does not focus on the worldly interests at stake." But he fails to see that her distinction between politics and administration is more complicated than is permitted by his emphasis on "the drive for purity [in politics]" (Reinhardt 1997, 148).

recognition of the role of administrators in a good government that encourages a public stance that is more arbitration or mediation than purity. Regarding these hard cases, the unsuccessful arbitrating administrator (CR, 175) replaces the truth-telling administrator. The arbiter appeals not to progress but to improvement because the material with which the administrator must work shifts from rational truth to conflicting, irreconcilable interests and to the political opinions that try to find their own path to mediating such interests. This chapter reconsiders the role administration plays in her work, as well as paying close attention to the way she views associations as mediators between political freedom and administrative goals. The positive view of public administration as an element of “good government” must be distinguished from bureaucratic administration. And the first step in considering this set of issues is to turn to where she names the source of her ambivalence: her study of government action run amuck.

## **SECTION 2: BUREAUCRACY AND THE POLICY OF LOGIC**

Arendt seeks in The Origins of Totalitarianism to make explicit the conditions that permitted the emergence of a particular kind of pointless and cruel government action in Germany and the Soviet Union. Many theorists have argued that the conclusions she reached in that work reverberate throughout the rest of her less historiographical texts, and that interpretations of these later texts suffer without an appreciation of the way in which her thinking was affected by that experience.<sup>12</sup> One insight that emerges out of her

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<sup>12</sup> For example, Margaret Canovan writes that “the most common reason why Arendt is misunderstood is that readers tend to start in the wrong place when trying to interpret her thought. ...virtually the entire agenda of Arendt’s political thought was set by her reflections on the political catastrophes of the

narrative of totalitarianism and takes shape in later works is that government action based on logic, and backed by force, can displace the reality of the world and undermine government.

This section will argue that this subversion of “reality” results in the stifling of administration as well as action, and that this requires a conceptual distinction between bureaucracy and administration as government forms.<sup>13</sup> The fate of action under totalitarianism has received much attention in the secondary literature, so this section will only briefly visit this issue. The fate of administration, however, has escaped notice, and this has led many of Arendt’s interpreters to worry that she views all efforts to collectively address social issues as destructive of the political sphere in the same way as totalitarianism, or to view all government action as lying on a continuum with totalitarianism. Instead, this section will argue that what Arendt objects to is government policy that takes its content from ideological goals related logically to one another, rather than from the unwieldy and diverse specific goals emanating from a reality in which law

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mid-century” (Canovan 1992, 7). The most egregious of these mistaken approaches is perhaps Gottsegen (1994).

<sup>13</sup> Arendt does not consistently use the vocabulary of a distinction between administration and bureaucracy, though she does seem to consistently separate “government” from the administration or bureaucracy into which it can disintegrate. For example, Arendt writes that “A complete victory of society will always produce some sort of ‘communistic fiction,’ whose outstanding political characteristic is that it is indeed ruled by an ‘invisible hand,’ namely, by nobody. What we traditionally call state and government gives place here to pure administration...” (HC, 44). In her discussion of the American revolution, Arendt claims that where representatives think of themselves as experts “government has degenerated into mere administration” (OR, 237). And later, she writes that “The transformation of government into administration, or of republics into bureaucracies, and the disastrous shrinkage of the public realm that went with it have a long and complicated history throughout the modern age...” (CR, 178). The language of administration used in this chapter follows the current usage of the distinction between public administration and politics, and Arendt’s understanding of the separation of powers in government. In addition, I have used “administration” following Arendt’s use of the phrase in her claim that “after all the world must be kept” (OHA, 327), and also to retain the ambivalence Arendt feels for this human endeavor.

provides a framework for acting, but not a guide for seamless policy. Under totalitarianism, as the tentativeness of the link between law and its application to particular cases is destroyed, administrative attempts to change circumstances and work specific improvements are displaced by bureaucratic planning for the benefit of “man” and without regard for human welfare (OT, 347). Such logical planning displaces the tentativeness that comes from stubborn interests that will not bow to political pressure, and from political refusals to administrative solutions, both of which serve as crucial markers of the reality of the world.

To make this case for what is distinctive about bureaucracy as opposed to administration, the section will move through three stages. First it will trace the emergence of the characteristic bureaucratic mode of implementing policy whose basis is logic (through the crisis of the nation-state brought on by the ascendance of the bourgeois ethic and imperialism, the persecution of stateless Jews, and the rise of totalitarianism). Second, it will discuss Arendt’s use of the term “reality” and the way bureaucracy’s subversion of the reality of the world threatens one’s apprehension of and possible effectivity in that world. Finally, it will highlight the conceptual distinctiveness of bureaucracy in Arendt’s understanding of the fate of law under the “principle of motion” and the absence of representation under the “principal of bureaucracy.”

The tale of the emergence of policy based on logic begins with the ascendance of the bourgeois ethic from the private sphere into the public, and the principle of endless expansion and wealth accumulation that accompanies this shift. The sense that Arendt hopes to convey by asserting the distinctiveness of policy based on logic is of the danger



that this principle denies the real limitations inherent in a plural world by displacing specific goals in favor of ideology. The final version of this shift in policy content is the search for “humanity” as the object of government action. At this point, she calls it a “crystallization,” totalitarian government action manifests the simple implementation of its own logic without the intervening policy choices that reflect the meanings and problems of reality. The absence of any particular goal or policy except for expansion represents the transformation into a political principle of what Arendt calls the “recklessness that had prevailed in private life, and against which the public body always had to defend itself and its individual citizens”(OT, 139). And the world, as opposed to the private sphere, suffers from this recklessness. The bourgeois ethic also prefigured totalitarianism for its valuation of “constant transformation and expansion,” the opposite of stability and therefore inherently antagonistic to existing and potential political bodies (OT, 138).<sup>14</sup>

But first, Arendt points to several factors that contributed to the eventual crystallization of totalitarianism. One factor is the particular way in which the imperialist project undermined the nation-state. For Arendt, the emergence of this prospect demonstrates the destructiveness of such a principle in the political sphere. She writes that “In contrast to the economic structure, the political structure cannot be expanded indefinitely, because it is not based upon the productivity of man... Of all forms of government and organizations of people, the nation-state is least suited for unlimited growth because the genuine consent at its base cannot be stretched indefinitely...” (OT,

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<sup>14</sup> Arendt’s concerns are also reflected in more recent analyses of the way the imperative of economic expansion can displace local government initiative. See, for example, Logan and Molotch (1987).

126). The nation-state can only accept assimilation and not integration, and “enforce consent rather than justice” (OT, 125). To avoid this contradiction, Arendt explains, British administrators in colonized places tried to stay “aloof... and [refrain] from spreading British law and culture” (OT, 130). Colonialism, in this sense, is pure administration, and colonial administrators are managers rather than politicians or political consensus-builders in the territories they oversee. They also protested against the lack of experience on the part of the “native majority” as a way of justifying the absence of any sort of representative scheme in the colonized areas (OT, 131). But Arendt argues that the economic interests dominating the imperial project, as opposed to those who primarily administered it, were not troubled by the failure to incorporate the colonial peoples into the nation; this was because they had hoped all along for “expansion of political power without the foundation of a body politic” (OT, 135).

Eventually, the principles underlying the monopolization of power in colonial areas made their way back home, because citizens in general, and not just citizens of colonized territories, are treated as foreigners. Arendt writes that “the contemptuous indifference of imperialist politicians to domestic issues was marked everywhere,” and the equation of imperialist and nationalist rhetoric justified a “policy [of expansion] beyond the strife of parties and particular interests” (OT, 153). This meant not that the colonizing countries had found their common interest but that the interest in wealth accumulation had displaced all talk of policy. “That the authority of the nation-state itself depended largely on the economic independence and political neutrality of its civil servants becomes obvious in our time; the decline of nations has invariably started with the corruption of its permanent

administration and the general conviction that civil servants are in the pay, not of the state, but of the owning classes” (OT, 154). Arendt fears that this turn away from the nation-state and towards the prospects of imperialist politicians and racial doctrines confirms the possibility that “there is, under the conditions of an accumulating society, no other unifying bond [besides race] between individuals who in the very process of power accumulation and expansion are losing all natural connections to their fellow-men” (OT, 157).

This shift away from the policy content of the nation-state and to race as a unifying ideology is accompanied also by a “revolutionary change in moral standards” (OT, 156) from a lame attempt to justify the public goal of wealth accumulation through recourse to “enlightened self-interest,” to the more powerful “realism” proposed by Hobbes. The earlier reliance on “enlightened self-interest” is unsatisfactory because “enlightened self-interest” does not necessarily have a positive result. She equates such higher self-interest with the fictional mechanisms of the “hidden hand”: “...as though these interests could create a new quality through sheer addition... they simply add up private lives and personal behavior patterns and present the sum as laws of history, or economics, or politics” (OT, 145). For Arendt, this wealth accumulation process simply replaces political action. It is not just that interests added up do not result in any law of history or economics (that there is no causal connection between the satisfaction of private interests and “progress”), but that (1) the result does not necessarily even relate to self-interest, and (2) the stifling of political action, and the related difficulty of substituting other policy content for the imperative of wealth accumulation, works against future changes. Whatever the problems

of this normative approach to self-interest, however, it showed that it was not necessary for the justification of accumulation. Rather, when faced with the need for further expropriation to keep the progress of accumulation and laws of economics in motion, the bourgeoisie easily adopted a partisan stance, and admitted its motivations in protecting the narrow self-interests of the mob (OT, 156).

Another crucial step towards the emergence of policy based on logic comes with the evacuation of even this non-normative self-interest in favor of government planning for the interest of “humanity.” The embrace of narrow self-interest as a mode of being-in-the-world, whether justified through claims to bring about a harmony of interests or brazenly adopted in spite of the world, itself relies on a societal structure that can readily evaporate. She writes that, “What happened to the clever little rules of self-interest has happened on a much larger scale to all the spheres of ordinary life which, because they are ordinary, need to be regulated by customs” (Arendt 1953b, 383).<sup>15</sup> For her, the failure of “‘normal,’ that is chiefly utilitarian judgement” is a symptom of this breakdown in tradition and custom. Self-interest is not a natural and inevitable source of social interaction but must be accompanied by custom.

Arendt’s use of “custom” in this case is based on Montesquieu’s distinction between laws and customs. In her view, “laws establish the realm of public political life, and customs establish the realm of society.”<sup>16</sup> Where laws are ineffective, customs may

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<sup>15</sup> Future references to this title are abbreviated as UP.

<sup>16</sup> The way in which she is influenced by this distinction between custom and law also helps explain her reaction to the Little Rock crisis, in that Montesquieu warns that it is “very bad policy to change by law what ought to be changed by custom” (Montesquieu 1949, 299).

remain intact, but “can be trusted to prevent the worst for only a limited time” (UP, 384). The simultaneous destruction of both with the coming of the industrial revolution, in part, accounts for an inability to come to grips with totalitarianism as a new phenomenon. “The framework within which understanding and judging could arise is gone” (UP, 386).<sup>17</sup>

That human society might be susceptible to planned changes in such customs, and to hubristic attempts to change the very nature of man, informs her scathing critique of Hobbes. In part, she criticizes Hobbes because she thinks he manufactures an image of human needs from a prior state structure. Members experience this state structure, whose principle and policy is a monopoly on the right to kill, as judged necessary by state operatives, and, excluded by the inevitable form of this public sphere, turn to the private sphere for fulfillment. But her exasperation arises primarily from the fact that the prior state structure Hobbes writes about is designed, not only for endless accumulation, but for the “new type of man” who seeks such accumulation (OT, 146). “What he actually achieved was a picture of man as he ought to become and ought to behave if he wanted to fit into the coming bourgeois society” (OT, 143). In this way, the Hobbesian idea of the state is implicated in the active promotion of changes in the nature of humans.

This points to important differences between “positivism, pragmatism, and behaviorism” and their attempts to influence government action, and the bourgeois ethic as it developed when combined with imperialism. These more limited doctrines, espoused

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<sup>17</sup> Arendt cites Montesquieu: “Man, this flexible being, who bends himself in society to the thoughts and expressions of others, is equally as capable of knowing his own nature when it is shown to him as he is of losing it to the point where he has no sentiment of it any more if he is being robbed of it” (Montesquieu quoted by Arendt in RP, 84).

for instance by Comte, did recommend government action; however,

...none of these theories assumes that it is possible 'to transform the nature of man' as totalitarianism indeed tries to do. On the contrary, they all implicitly or explicitly assume that human nature is always the same, that history is the story of changing objective circumstances and the human reactions to them, and that interest, rightly understood, may lead to a change of circumstances, but not to a change of human reactions as such. 'Scientism' in politics still presupposes that human welfare is its object... (OT, 347).<sup>18</sup>

She points out that "The eighteenth century notion of progress, as conceived in pre-revolutionary France, intended criticism of the past to be a means of mastering the present and controlling the future; progress culminated in the emancipation of man" (OT, 143).

And, in fact, before its danger to the political sphere was revealed, the French Revolution held off the bourgeois ethic for a time (OT, 144). This focus on welfare, though later associated in Arendt's work with the rise of "the social," is here portrayed as regrettably subverted by the move toward logic as policy.

The new notion that made "humanity" the subject of policy arose, ironically, in part through the agreements made to protect "stateless peoples" after the first world war. Through the language of international treaty, drawn from the "rights of man" asserted during the French Revolution, such peoples were given the rights due to members of the human race, but none of the rights due to members of any particular society. Later, they suffered the results of a principle of human rights with no enforcement mechanism and no existence in reality, except for the negative one that caused government officials to deny

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<sup>18</sup> Thus, Arendt differs on one hand from Hayek, who thinks that these doctrines led inevitably to totalitarianism, and on the other hand from Voegelin, who equates these doctrines with political choices that reflect spiritual decay. In her reply to Voegelin, Arendt asserts that "the loss of interest is identical with the loss of 'self,' and the modern masses are distinguished in my view by their self-lessness, that is their lack of 'selfish interests'" (Arendt 1953a, 81). (In future references, this title is abbreviated RP.)

all responsibility to them. It was revealed that “humanity” as a subject of rights does not reflect the space between people, nor the space within which they move, but refers instead to a transcendent realm that has no effective link to people, and results in a gaping abyss between ideal and reality. The stateless jews of the 19th century, were particularly susceptible because they carried on an “aloofness without policy” (OT, 5). In this way, they were subject to the whims of a government external to themselves and its fabrication of myths.<sup>19</sup>

As Arendt explains, the events of this century revealed the dangers of the formula introduced by Plato into political thinking - the equation of just politics with the implementation of “the good.” With the loss of a tradition specifying the content of “the good,” a newly empowered humanity seeks what is “good for” and opens the possibility that “one fine day a highly organized and mechanized humanity will conclude quite democratically - namely by majority decision - that for humanity as a whole it would be better to liquidate certain parts thereof” (OT, 299). Against the implementation of law (drawing its source from a transcendent “humanity”) with no policy (reflecting the problems of reality), universal human rights, as Burke complained, is an empty abstraction.

With the shift to totalitarianism, government action reaches a new and insidious form, as “humanity” is adopted as the end goal of a governing body that, unlike the League of Nations and the impotent Minority Treaties, actually sets out to execute and implement this abstract notion. The task of the totalitarian government is to fabricate

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<sup>19</sup> Her analysis on this point is similar to that of Walzer who points to the role of states which “exist to defend the rights of their members” (Walzer 1977,136).

mankind. Unlike positive law, which derives its source from elsewhere before determining how to, imperfectly, apply it to particular circumstances, totalitarian law aims to make human beings the expression of the achievement of law (OR, 462). Under pressure to divert any normalization that might restore stability, totalitarian policy sought the progress of mankind through constant movement and deferral of both goals and evaluations to the future (OT, 391). Rules constantly changed, and policy goals referred to a future far out of reach.

According to Arendt, the everyday, utilitarian content of policy was replaced by a deliberately-woven fabric of ideology whose consistency could replace the stubborn contingency of factual truth (BPF, 241). “It is in the nature of ideological politics... that the real content of the ideology... is devoured by the logic with which the ‘idea’ is carried out” (OT, 472). Totalitarian rulers avoided all reference to practical issues and policy content. She cites Himmler’s assertion that his SS-men, among many others, “were not interested in ‘everyday problems’ but only ‘in ideological questions of importance for decades and centuries, so that the man ... knows he is working for a great task which occurs but once in 2,000 years’” (OT, 316). Similarly, “Hitler’s greatest achievement in the organization of the Nazi movement... was that he unburdened the movement of the party’s earlier program, not by changing or officially abolishing it, but simply by refusing to talk about it or discuss its points...” (OT, 324).

Thus, a crucial element in the “crystallization” of totalitarianism is that governments drifted away from policy with contents manifesting the present concerns of the individual in a world that extends into the future, and toward policies representing only



the internally consistent logic of ideology. And this drift continued until totalitarian leaders realized the usefulness of this type of policy to their plans. In turn, individuals came to identify with these abstract goals: first with the bourgeois ethic of “enlightened self-interest,” then “realism” in the face of the expansionist imperative, and eventually abandoning action and self-interest in favor of desperate attempts to obey continually changing decrees (OT, 468). In such a situation, even the “specific class articulateness which is expressed in determined, limited, and obtainable goals” (OT, 311) is subverted, and administrative attention to these partial interests, so undesirable by other frames of reference, are stifled. For Arendt, this does not just mean that law and its implementation are stifled, but also that the distinction between lawfulness and lawlessness breaks down so that individuals are left with no mechanism for judging their own or other’s actions. “Totalitarian lawfulness, defying legality and pretending to establish the direct reign of justice on earth, executes the law of History or of Nature without translating it into standards of right and wrong for individual behavior” (OT, 462). This disconnect between logicity and reality informs Arendt’s later account of Adolph Eichmann’s failure to think.

Arendt turns to Montesquieu in her attempt to work out an understanding of this destructive form of governance. Montesquieu claims that governments can be defined according to the “principle of action” that “inspire[s] government and citizens alike in their public activity and serve[s] as criterion, beyond the merely negative yardstick of lawfulness, for judging all action in public affairs” (OT, 467). In contrast to government as Montesquieu knew it, however, Arendt argues that part of totalitarianism’s

destructiveness and newness lay in subverting any such principle of action, and replacing it with a principle of motion. Where “positive laws in constitutional government are designed to erect boundaries and establish channels of communication between men whose community is continually endangered by the new men born into it,” and “the stability of [these] laws corresponds to the constant motion of all human affairs” (OT, 465), laws under totalitarianism have themselves “become laws of movement” (OT, 463).

The constantly changing decree, rather than law, is the vehicle for this kind of government policy. “Legally, government by bureaucracy is government by decree, and this means that power, which in constitutional government only enforces the law, becomes the direct source of all legislation” (OT, 243). The official in a bureaucracy

considers the law to be powerless because it is by definition separated from its application. The decree, on the other hand, does not exist at all except if and when it is applied; it needs no justification except applicability (OT, 244).

In this way, bureaucracy leaves no room for the logical separation of policy and its implementation. For example, bureaucrats do not recognize the possibility of refusal manifested in the civil disobedient. And the bureaucrat feels contempt “for the supposed lack of freedom of the legislator, who is hemmed in by principles, and for the inaction of the executors of law, who are restricted by its interpretation” (OT, 243). Arendt looks to the British colonial administrator Lord Cromer for the “philosophy of the bureaucrat.” Most important is the substitution of “personal influence” for actual policy. “This kind of informal influence was preferable to a well-defined policy because it could be altered at a moment’s notice...” (OT, 213). Such policy uses secrecy rather than publicity because internal consistency does not require appeal to the world, and indeed would suffer from

such input. Because this form of government seeks the consistency of a scientific plan, bureaucracy is “always a government of experts” who should not have “general ideas about political matters at all” (OT, 214).

But the most fateful aspect of totalitarian government, for Arendt, is that it draws upon an eclipse of the reality of the world that is manifested in a widespread inability on the part of individuals to apprehend the world as their own and subject to their interventions. The “world” “is not identical with the earth or with nature.... It is related, rather, to the human artifact..., as well as to affairs which go on among those who inhabit the man-made world together.” Like a table in between, it both “relates and separates” humans (HC, 52). “If the world is to contain a public space, it cannot be erected for one generation and planned for the living only; it must transcend the life-span of mortal men” (HC, 55). The reality of the world is visible when individuals recognize the stubbornness of things, but also the stubbornness provided by themselves.

Arendt contrasts an appreciation for the reality of the world with the diminished temporal framework provided by the reality of life. The world reaches into the future, whereas life exists entirely in the present.<sup>20</sup> In later works, Arendt explains this more fully by distinguishing between trust in life and trust in the world as appropriate contexts for government action.

For our trust in the reality of life and in the reality of the world is not the same. ... If one knew that the world would come to an end with or soon after his own death, it would lose all reality... Trust in the reality of life, on the contrary, depends

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<sup>20</sup> “To men the reality of the world is guaranteed by the presence of others, by its appearing to all; ... and whatever lacks this appearance comes and passes away like a dream, intimately and exclusively our own but without reality” (HC, 199).

almost exclusively on the intensity with which life is felt... (HC, 120).

In her attempt to identify what it is about totalitarianism that differs from other forms of tyranny that threaten life, Arendt found both that these two aspects of reality are not the same, and that the reality of life itself relies on the reality of the world for protection.

This distinction between life and world is crucial because where a society in which the reality of life provides the context for government action is susceptible to scientific planning, the reality of the world supports political life and action.<sup>21</sup> The risk of the former societal context is that government will encounter pliability rather than stubbornness, rendering precarious even national housekeeping. Even self-interest could not compete with the propagandists' "knowledge that interest as a collective force can be felt only where stable social bodies provide the necessary transmission belts between the individual and the group" (OT, 348). Thus, the whole population of Russia was transformed into a laboring society (HC, 220). In other words, the simple lack of public concern did not cause totalitarianism. In her criticism of John Dewey, she says that he "earnestly holds that the source of all the social and political evils of our time is laissez-faire (supposed to have caused the outstripping of social knowledge by scientific knowledge)," when it is clear that only "scientific planning" could have had such results (Arendt 1994, 194).<sup>22</sup>

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<sup>21</sup> See Sharpe's excellent account of the relationship between trusting one's reality and the ability to judge. He describes Arendt's understanding of the role of "reality" in judging and politics as one of delivering a balance between "modesty" and "arrogance" in judgement. However, he does not sufficiently convey that confidence in judgement depends, in large part, upon one's ability to have effects in the world, an ability that tells one that he or she has reliably appraised the contents and reality of the world. In a sense, the stubbornness of world is required before judgement even becomes relevant (Sharpe 1999).

<sup>22</sup> Future references to this title are abbreviated EU.

It is significant that, as the gap between the abstract goal of “humanity” and the real problems of everyday became slowly obvious (and therefore more susceptible to challenge and action), and as reality began to dawn, in Hungary for example, the first concessions were made in economic matters, “where nothing more was at stake than the organization of labor and the mode of consumption and appropriation of consumer goods” (OT, 502).<sup>23</sup> For Arendt, this recalls the link between the bourgeois ethic and the tendency to cede the necessary choices regarding policy to the process of wealth accumulation and the concerns of the private sphere. In fact, Arendt speculates that the bourgeois ethic was always implicitly or potentially totalitarian as it equated economics, politics, and society (OT, 336). For this reason, concessions to the reality of life were permitted so long as the reality of the world remained suppressed. The importance of private interests allowed some reprieve for the totalitarian government not able to secure global control (OT, 392). However, the very fact that this partial concession to individual economic interests could be permissible to such rulers points to the way in which the bourgeois ethic may be implicated in displacing the world. And, while this could not stave off political acting forever, it certainly did not allow for the world’s durability to be seen as a lasting and stable framework for action.<sup>24</sup>

Arendt has argued at various points that a sufficient appreciation of the reality of the world includes an understanding of the structures of consequence and responsibility

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<sup>23</sup> Canovan argues that Arendt was inspired to consider “revolution” by the events of Hungary (Canovan 1992, 14).

<sup>24</sup> Drakulic characterizes the limited space - the present - that the reality of life permits to come into view. “To grow up under communism means to live forever in the present.” She asserts that in such a context, for example, even the decision to fix one’s teeth is not made (Drakulic 1993, 141).

(OT, 445),<sup>25</sup> an appreciation of the difference between fact and fiction (OT, 474), and articulation rather than silence (OT, 351).<sup>26</sup> The reality of the world provides a framework within which one can appraise and change one's circumstances, through sharing meaningful opinions with others and applying one's abilities to chosen projects. "The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective" (OT, 296), whereas "[b]ureaucracy is the form of government in which everybody is deprived of political freedom, of the power to act" (CR, 178). Importantly, the world encompasses both stubborn structures (the artifacts - material, linguistic, and legal - created by *homo faber*) and relations among individuals (the result of action). Much more than economic space is required for the viability of the world and the visibility of political freedom. But, especially to the extent this economic space represents the belief that people hold in their own reality and their own ability to affect the world, it can be a crucial ingredient. "For us, appearance - something that is being seen and heard by others as well as by ourselves - constitutes reality. ... The presence of others who see what we see and hear what we hear assures us of the reality of the world and ourselves..." (HC, 50).

Arendt's writings about the importance of the world to political judgement and action have received extensive attention, but Arendt also devoted considerable effort to understanding the implications of this concern for reality (of life and world) for our

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<sup>25</sup> See also Pitkin (1998, 88-89).

<sup>26</sup> "For us, appearance - something that is being seen and heard by others as well as by ourselves - constitutes reality. ... The presence of others who see what we see and hear what we hear assures us of the reality of the world and ourselves..." (HC, 50).

thinking about forms of government in general, including the relation between politics and expert administration.<sup>27</sup> With her analysis of the emergence of logic as the basis for government policy, Arendt considers the way government - through a particular relation between law and its implementation - can obscure reality and impede judgement by severing the reality of life from the reality of the world. The culprit is not government action in general, but bureaucratic government, and her effort to understand what it is about bureaucracy that results in the destruction of both life and world. Bureaucratic administration means the absence of public administration - public attention to shared problems - as well as the absence of political action. The challenge is to characterize what aspects of government institutionalization are crucial to maintaining the reality of both life and world so that political freedom is a visible, and therefore more invincible, aspect of human living-together.<sup>28</sup>

Many authors tend to conflate all Arendt's talk of bureaucracy and administration into one negative picture of government action, leaving no way of understanding her positive statements on government. Arendt believes that government can result in

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<sup>27</sup> Arendt traces this question about the structure of government to Montesquieu and his attempt to name "what makes it what it is." She says this kind of question has been largely discarded by political science as a preliminary, naming exercise, but, in confronting totalitarianism, she "appeals to the traditional - though no longer traditionally accepted - criteria:" Montesquieu's government principles and Kant's "distinction between forms of domination and forms of government, as well as between constitutional... and despotic government" (EU, 329-331). Pitkin, however, argues that "Arendt was, on the whole, not much interested in institutional arrangements," except for councils (Pitkin 1998, 257). But the directionality of Pitkin's analysis makes it difficult to see the extent of concern for institutional questions in Arendt's work. Indeed, Pitkin begins her concluding chapter with many examples.

<sup>28</sup>To make political freedom visible, however, is not to shed light on all of reality. The link between the public and private person is a worldly link, and understanding extends outward. "In distinction from fantasy which dreams up something, imagination is concerned with the particular darkness of the human heart and the peculiar density which surrounds everything that is real... True understanding does not tire of interminable dialogue and 'vicious circles' because it trusts that imagination eventually will catch at least a glimpse of the always frightening light of truth" (UP, 392).

something more than instrumentalism, though it can never fully account for the dignity and meaning of human living-together. The appropriate question then is how to stave off “scientific planning” and fight attempts to implement policy whose basis is logic. Arendt’s work suggests an answer in administration as an element of good government in which freedom is not for making policy but flourishes alongside it. The next section will explore in more detail such a positive role for government administration, its benefits and risks.

### **SECTION 3: GOOD GOVERNMENT AND KEEPING THE WORLD**

What most struck Arendt about totalitarianism is the way it strives to stifle the ability to act, and where totalitarian bureaucracy stifled action, it also squashed the administrative functions of governments that had been in place in Europe since the 17th century (OT, 154). While these governments, according to Arendt, had become less able to provide civil services because of ethnic and class strife, totalitarian governments deliberately rejected such functions. What is distinctive about these governments is not that they refused to take control of providing services -they were often very efficient at carrying out needed functions - but that they rejected the notion that such functions were the purpose or end of government. Instead, under totalitarianism, the force of modern planning in favor of “humanity” displaced the notion of government in the service of men and women in the plural. The bureaucratic form of government used by totalitarian leaders “has to be distinguished from the mere outgrowth and deformation of civil services which frequently accompanied the decline of the nation-state - as notably, in France” (OT, 244). Totalitarian bureaucracy is not merely a deteriorated version of the governments



that preceded it because it requires a deliberate plan and a willingness to use extraordinary violence coupled with widespread social breakdown and thoughtlessness. These governments were able to exert themselves in the vacuum left by the instability of social, moral, and political systems.

This distinction between totalitarian governments and deformed national governments is crucial because it suggests an attempt to find an appropriate place for government tasks that has been largely overlooked in the secondary literature on Arendt. While these administrative functions, in her view, do not amount to political freedom, their absence is one of the hallmarks of bureaucratic government, and they must be present in what she calls “good government.” For example, Arendt laments the situation in which humans can send a man to the moon but cannot end the Vietnam War or effectively collect garbage.

It is as though we have fallen under a fairyland spell which permits us to do the ‘impossible’ on the condition that we lose the capacity of doing the possible, to achieve fantastically extraordinary feats on the condition of no longer being able to attend properly to our everyday needs. If power has anything to do with the *we-will-and-we-can*, as distinguished from the mere *we-can*, then we have to admit that our power has become impotent. The progresses made by science have nothing to do with the *I-will*; they follow their own inexorable laws, compelling us to do whatever we can, regardless of consequences (CR, 183).

The question is how to have a government that provides such services alongside political freedom, rather than equating political freedom with these tasks.

This approach is related to Margaret Canovan’s claim, in Hannah Arendt: A Reinterpretation of Her Political Thought, that Arendt’s work has an importantly institutional component. She asserts that Arendt learned from Eichmann that:

listening to one's own conscience in the privacy of one's own soul cannot be a reliable guide for politics. Her claim is that those engaged in civil disobedience in the USA represented something different from this, and were responding to another set of obligations which overlap with personal moral obligation and greatly complicate the problems of moral judgement. These are the obligations a citizen bears for the public world for which he is collectively responsible with others - obligations which can only be decided in free discussion with others, not within the private conscience of each (Canovan 1992, 184).

In this way, Canovan does not stress, as have others, Arendt's turn to "enlarged judgement." Instead, she focuses on Arendt's fear that private morality "did not include concern for the establishment and survival of sound political institutions, which alone could stand against totalitarianism" (Canovan 1992, 185). Canovan argues that "one of her main reasons for trying to draw a line between politics and private morality is precisely to direct attention away from what goes on inside the individual soul, and instead to stress what happens outside and between individuals: institutions rather than will [OR 76,157], actions rather than motives" (Canovan 1992, 193). Others have criticized this institutional approach to Arendt's work, but it reveals a link to her concerns about totalitarian bureaucracy.

Arendt looks to the American revolution for an example of "good government" that, at its best, both addresses administrative tasks and recognizes the distinctiveness of political action. Arendt says that she shares Hamilton's hope that "men 'are really capable... of establishing good government from reflection and choice,' that they are not 'forever destined to depend for their political constitutions on accident and force'"(OR, 214). On one side of good government is a tradition of self-help and practical public work that Arendt sees in the early colonists and that provides an instrumental inspiration for

institutions (OR, 157, 169). The practical concerns of the colonists gave rise to governing arrangements that could carry out administrative tasks, and whose kernel remained in the work of the revolutionaries. And while many have criticized her claims that America suffered no poverty, as well as noted her qualifications of this claim, what is decisive for her is that factors (a possibility for expansion, a relatively equitable distribution of wealth, the precious habits of self-government) combined to produce a situation in which choice about their circumstances was indeed present to the minds of revolutionaries. And it is perhaps not by chance that she chose Hamilton, widely cited for his support of a strong central and expert government, rather than Jefferson in this reference to founding government. On the other side of good government are the political actors in associations who present a challenge to the authority of administrative solutions. Arendt adds that "...it is the task of good government and the sign of a well-ordered republic to assure [councils] of their rightful place in the public realm" (OR, 279).

Arendt worried a great deal that these two sides of good government might not be compatible. A crucial issue concerns the centralization that is called for by such services. For example, Arendt describes the problems generated by public administration in terms of the logistical challenges of the upkeep of the world, challenges that may require centralization and exceed the grasp of associational activity. When asked about her repeated insistence on the councils in the face of the need for centralization in government, she conceded that

after all, the world in which we live has to be kept. We cannot permit it to go to pieces. And this means that "administration of things," which Engels thought such a marvelous idea, and which actually is an awful idea, but which is still a necessity.

And this can be done only in a more or less central manner.

And on the other hand this centralization is an awful danger, because these structures [of the division of power and many sources of power] are so vulnerable. How can you keep these up without centralization? And if you have it, the vulnerability is immense (OHA, 327).

And in “On Violence,” Arendt writes that “whatever the administrative advantages and disadvantages of centralization may be, its political result is always the same:

monopolization of power causes the drying up or oozing away of all authentic power sources in the country” (CR, 182). Arendt’s reflections lead her to two conclusions; (1) that the world itself demands centralization, and (2) that power is not “for” services. The appropriate response, according to Arendt, is to simultaneously recognize administrative authority that comes from keeping the world and to insist that administration take its understanding of the world from a source that may also include interruptions to administrative authority

But, even with these concerns, the challenges posed by administration under a system of good government are very different than those raised by bureaucracy. Unlike bureaucratic administration where the impetus to centralize comes from systemic logic, destroying the world through indifference or scientific planning, public administration as a part of good government centralizes in an attempt to keep the world that is made to appear through associational activity. And though keeping the world requires centralization, good government also provides an account of dissent designed to counter the negative effects of centralization on power. Government officials are charged with simultaneously performing administrative functions while recognizing that this does not amount to political freedom.

This section will explore three aspects of Arendt's account of administration that is a part of "good government." The first aspect of Arendt's account of good government is that administration possesses independent authority that comes from its responsibility for traditional government tasks, though her account of this authority is different than the authority to implement a will that is identified by representative government. The second element is a "right to be a participator" that asserts the importance of associations in implementation rather than only in identifying laws that will limit government. The third element is a notion of dissent according to which consent does not extend to specific policies, so that government officials are compelled to limit claims on behalf of their programs to their potential for bringing improvement rather than progress (CR, 83). An important result of this account of good government is that public administrators often have the most prominent role in dealing with dissent. Since opinions are, by definition, singular and not representable, they are often not heard until policies are being implemented and the particular becomes visible. Arendt's work suggests that, around certain issues that cannot be identified in advance, opinions reveal the reality of the world in the course of discussions of the implementation, not just the writing, of law. In contrast to representative government's view of administration as set apart from political contest, Arendt's understanding of "good government" suggests a political role for administration that is not often appreciated by critics of Arendt's work.

Finally, the section will contrast this account of "good government" to the way in which Honig and Pitkin each understand the role of administration in Arendt's work. The section will argue that while, for Arendt, the *Polis* represents an unrecoverable sense of

government among equals, good government results from a truce whereby administration works between the boundaries of associations for the sake of the world, and associations provide a reassertion of self-government and solidarity against administration's tendency to overstate its authority and misapprehend the world. Associations provide a reminder that administration is not self-government, and that representation is only a truce enabling administration to address the durable world.<sup>29</sup>

The first element in Arendt's account of good government is that administration possesses independent authority that comes from its responsibility for traditional government tasks, though her account of this authority is different than the authority to implement a will that is identified by representative government. This element can be explored through a contrast with Woodrow Wilson's early writings on public administration, often cited as the standard account of public administration as the expert and neutral implementation of political will. While similarities in Wilson's and Arendt's positions abound, they differ most fundamentally on what is at stake in the way the modern administrative state manages the relationship between political freedom and public problems.<sup>30</sup>

Both authors think that there are what can be called the traditional tasks of government. Wilson calls administration "the most obvious part of government... as old

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<sup>29</sup> Wolin has suggested that her attention to the individual belies an inability to recognize the importance of the state, and the accompanying importance of justice, in modern, as opposed to ancient, society (Wolin 1994, 296).

<sup>30</sup> Wamsley cites Van Riper who thinks Wilson's significance is overdrawn, but his work will be helpful here. Though the negative aspects of his views on participation have been much discussed, they productively draw out crucial aspects of Arendt's approach (Wamsley 1996, 363).

as government itself” (Wilson 1970, 131). Similarly, Arendt writes about the performance of traditional governmental tasks by the early colonists (OR, 157,169) whose common sense and “realism” she praises (OR, 95). Arendt and Wilson agree that though the distinction between political and administrative tasks is clear, the location of the distinction is not discernible. Wilson suggests that such a quest would lead “up hill and down dale, over dizzying heights of distinction, and through dense jungles of statutory enactment...” (Wilson 1970, 146). Arendt writes that “in the modern world, the two realms indeed constantly flow into each other like waves in the never-resting stream of the life process itself” (HC, 33).

It also might seem that Arendt would find in Wilson support for her sense of power - as action in concert - as a bulwarck against instrumentalism in politics. She makes a famous distinction between power and violence - where power “corresponds to the human ability not just to act but to act in concert” and is the “essence of all government” (CR, 150); while violence stands outside politics. Wilson seems to have a similar understanding of power as positive. In “Political Sovereignty,” he writes that

Sovereign power is a positive thing; control a negative thing. Power belongs to government, is lodged in the organs of initiative; control belongs to the community, is lodged with the voters (Wilson 1973, 90).

From this perspective, the power to initiate public policy relies upon the control or attention of voters.

For Wilson, what is new about the way constitutional government handles these tasks is that it considers administration one function in a process that is the essence of politics. Wilson thinks that the challenge of administration in a modern state is simply one

of bringing an old profession, that continues to improve its craft, to respect constitutional guarantees while implementing the political will on behalf of a public that has recently organized itself into a democracy. Under a representative government, those charged with deciding upon law possess power that flows to them from the public. For Wilson, the best role for voters is “authoritative critic” of administrative attempts to implement political will (Wilson 1970, 149).<sup>31</sup> He describes a merely reactionary role for the public who must make sure government does not exceed its constitutional authority. For Wilson power resides in the “law-making body” whose agent is the Executive, while those who are not government representatives can only react and not originate. (Wilson 1973, 91). And, finally, Wilson argues that “[t]he sanctioning judgements of a people are passive, dormant, waiting to have things put to them, unable themselves to suggest anything, because without organs of utterance or suggestion” (Wilson 1973, 86). Wilson thinks representation is best because running a constitution is a process of identifying and implementing political will.

But Arendt thinks that government overstates its authority and misjudges its limits when it claims to be implementing political will. A constitution, from her perspective, is not something that one runs, and it does not provide the content of political will. She rejects Wilson’s understanding of power as positive command of the government apparatus, and she refuses to define the role of political actors in terms of completing a

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<sup>31</sup> The dual perspective, in Wilson’s work, between a powerful administration with significant discretion and a body of workers with neutral competence at the call of political authorities, is discussed by Jameson Doig (1984). The tension, according to Doig, arises in part from Wilson’s attempt to reconcile the British model of parliamentary authority with the business traditions in the U.S. (Doig, 1984).



process of implementing policy. In a footnote on Wilson, she claims that “This confusion of the power to act with the right to control the ‘organs of initiative’ is of a somewhat similar nature as the previously mentioned confusion of liberation with freedom” (OR, 299). In this earlier, well-known account of the French revolution, “...liberation from tyranny spelled freedom only for the few” who were “representatives in a common cause” (OR, 74), and the second liberation, the battle against misery that provided the background for the reign of terror, “... had nothing to do with freedom” and required the representatives to “identify [their] own will with the will of the people” (OR, 75).

For Arendt, the view of constitutional government represented by Wilson seeks nothing more than “government limited by law” (OR, 143), and must be distinguished, according to Arendt, from the attempt to “establish... an entirely new system of power” in the American revolution. She claims this was the “actual content of the Constitution,” as distinguished from the much older concept of constitutional government (OR, 147).

Where Wilson thinks the legitimacy of administration derives from the law’s implementation and the dependable systematization of accountability to public opinion, Arendt claims that “Power springs up whenever people get together and act in concert, but it derives its legitimacy from the initial getting together rather than from any action that may follow” (CR, 151). In this sense, Wilson provides a formula merely for what Arendt calls limited and “civilized government” under modern conditions, not to be equated with “the very substance of a free republic” - the effective existence of the right to be a participator (OR, 218).

Thus, for Arendt, the administrative functions of good government must be joined

by a second element - a “right to be a participator” - that asserts the importance of associations in implementation rather than simply in identifying laws that will limit government. Arendt insists that “...it is the task of good government and the sign of a well-ordered republic to assure [councils] of their rightful place in the public realm” (OR, 279).

The separation of power as understood by representative government threatens to hinder participation by removing a central aspect of governance - implementation - from public involvement. Where government is differentiated into functions, the enormous and varied sites and tasks of execution are segregated from lawmaking where public involvement is considered essential. Arendt asserts that “...the original interdependence of action, the dependence of the beginner and leader upon others for help and the dependence of his followers upon him for an occasion to act themselves, split into two altogether different functions: the function of giving commands... and the function of executing them” (HC, 189). Often, the implementation of government policy is not understood as offering a chance for participation because the complexity of problems means that those who are affected by policy are not the same ones who advocated for it, either because of disagreement or logistics.

Arendt’s understanding of the interdependence of action points to the political nature of implementation because it is a part of acting, so that an act continues throughout implementation rather than stopping with decision or statements of will or policy. To the extent government policy begins in representative demands, it is limited in its understanding of the world. Representation is not reliable by itself as a source of the

reality of the world that must inform the implementation of law and public decisions, but neither is research driven by the desire for logical developmental plans. Arendt thinks that the founders of the American system recognized that government officials, engaged in solving the problems of implementing a will identified by representative government, are not especially equipped to see the reality of the world and the diverse values held by those in the world. While representative government can address interests by following the formula of implementing the will that is identified through representation, other mechanisms for participation are crucial in seeing the reality of the world.

She argues that councils, or associations more broadly construed, enable the display and reinforcement of meaning that exceeds what can be expressed in statements of political will. What associations bring into public is opinions that are unique and so unrepresentable. In discussing the notion of opinion in the American system, Arendt explains that “The distinction is ... the notion of group interests, which are always there, and opinions, where I have got to make up my mind” (OHA, 331). The stark separation between executing and commanding cannot accommodate the way in which the leading/following relationship depends upon opinion-holders who make up their mind to follow. Bickford argues that for Arendt opinions “require the presence of others” (Bickford 1995, 320).<sup>32</sup> Arendt claims that though representative government can be good at ensuring individuals have a satisfactory hearing and address of their interests,

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<sup>32</sup> Bickford argues that, for Arendt, opinions “are the content of speech in the public realm; my opinions - how ‘it seems to me’ - are a central part of my unique identity. Unlike interests or personality traits, opinions belong ‘exclusively to individuals,’ and ‘there are few things by which men are so profoundly distinguished from each other as by these’” (Bickford 1995, 317) And they “are not simply gut preferences; they are judgement arrived at by a particular thinking process” (Bickford 1995, 320).

relative to other conflicting interests, it is not good at appreciating opinions. For Arendt, opinions are important because their uniqueness means they cannot be expressed well through aggregation and because the world is made visible as they are formed, shared, and disputed in public in a way that is quite different than representative mechanisms. While government can address interests by following the formula of implementing the will that is identified through representation, when it comes to opinion, they must turn to other mechanisms for participation. Interests and opinions stand in a different relationship to government administration because interests are clearly either served or foiled by government policy, while opinions about government policy can exist independently of the effect that policy can have on one's interests. This is because opinions emerge from a position that includes interests but also encompasses meanings that exceed what is expressible by statements of will and are excluded by justifications that administration is implementing will.

An example in her work that shows the way reality can be obscured emerges in her discussion of how administrators faced dissent that arose during the implementation of urban renewal law, when residents objected to the implementation of housing standards where they conflicted with "love for one's neighborhood." Arendt's comments joined an ongoing debate over the status of urban renewal programs that justified razing whole neighborhoods in the name of improved housing standards. She thinks this dilemma points to the incompleteness of the picture both of the world and of residents provided by representative government decisions. Arendt thinks that representative government has difficulty with housing policy because it clumsily maneuvers the tension between public

and private. Administrative values and the pressures arising from the presence of the administrative state often stifle political contest and the result is what she calls “national housekeeping.” She often claims that the shortcomings of representative government are reflected in its tendency to use the misleading metaphor of national housekeeping, even though individuals are not fully described in these terms. The important point here is that administrators are the front line in this equation of the country with a household, and in the demands that government keep the world rather than a household.

On one hand, urban renewal policy reflected an incomplete picture of the world. Gans argues that the policy improperly attacked low rent rather than harmful housing, and was thus doomed to failure because sufficient resources to provide substitute low-cost housing would never emerge. And certainly the emergence of a wider public opinion against urban renewal was more complicated than simply listening to the objections of residents. Gans argues that it was not just representation of a missing perspective but aspects of the objective situation that made the policy impossible. “Most likely, the bulldozer approach to urban renewal was actually terminated by the immense difficulty of relocating, even improperly, large numbers of poor people; by the opposition from white neighborhoods experiencing the arrival of black displacees; and last (but hardly least) by ghetto protests against further negro removal” (Gans 1982, 385). But Arendt’s work suggests that representative government cannot properly address this dilemma because the language of exception cannot convey the sense of intentional compromise that is bound up in such a refusal of housing policy.

On the other hand, urban renewal policy failed to comprehend the perspective of

residents. For example, Gans points to problematic assumptions about reactions to “better” housing: that residents acting rationally will choose the “better” housing and that in higher quality housing people will make better choices. For Arendt, representative government proved unable to convey the dilemma faced by those who might have agreed with objective statements about an interest in housing standards, but were opposed to government action, not only because the number of units would eventually fall but also because they did not think it was appropriate for government to make a decision about their neighborhood on their behalf. The policy did not present a meaningful choice demanded by residents “in opposition to the demonstrably valid opinion of experts.” Arendt thinks that “love for one’s neighborhood” is a political opinion because it reveals the side of the world that is comprised of “relations,” rather than “things,” and is not visible in the absence of others with whom one publicly shares opinions. As political opinion it is not only difficult to represent, it defies the “household” analogy.

Administrators as a part of good government rely, on one hand, upon the incomplete picture of the world provided by representative government decisions, and, on the other hand, upon opinion change that happens among political actors, sometimes without regard for administrative goals. Opinions are crucial to the effectiveness of public policy because opinions may be subject to change in a way interests are not. Prejudices are similar to opinions in this respect, they are formed in public where power resides, while interests are formed outside power and threaten its maintenance. In "On Violence," Arendt writes that "under the pressure of power, prejudices, as distinguished from both interests and ideologies, may yield..." (CR, 173). Interests often seem more easily

addressed by administrators, but because they are grounded in the stubborn material structures of the world that are a result of past decisions they sometimes present more intractable resistance to administrative solutions than political opinions. For this reason, Arendt thinks that successfully implemented policy often signals a change of opinion rather than an attempt to avoid sanctions that are contrary to one's interests.<sup>33</sup>

With this claim about the importance of opinion change to the success of government policy, Arendt does not deny the way that sanctions can shape choices, or the fact that, temporally, laws are often passed before opinion accepts them. Nor does she suggest that might makes right. Rather, she argues that keeping the world while ensuring the right of participation that illuminates the world implies the possibility of dissent regarding the administrative functions of government, and loosens administration from "political will." So administrators often struggle to achieve a balance between what can be expressed through statements of singular public will and what only comes into public when the world is illuminated through exchange of conflicting opinions.

An important result of Arendt's account of the shortcomings of representative government vis-a-vis opinions is that public administrators often have the most prominent role in dealing with opinions because they are in a position of directly experiencing the voicing of opinions. Since opinions are, by definition, singular and not representable, they are often not heard until policies are being implemented and the particular becomes visible.

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<sup>33</sup> With this claim, Arendt is not invoking a Hayekian notion of rule of law, as Bohman suggests in his reading of her view of equality. Bohman argues that "on her narrow reading, political equality is limited to the rule of law. Law is quite limited in its function: it guarantees the equal freedom of all citizens and nothing else" (Bohman 1996, 63).

Arendt's work suggests that, around certain issues that cannot be identified in advance, opinions reveal the reality of the world in the course of discussions of the implementation, not just the writing, of law.

Under good government, learning and judgement do not stop with procedurally-correct decision, they continue throughout implementation. In this sense, Arendt insists that the distinction between political and administrative does not correspond to functions before and after a procedurally correct decision. And this insistence, rather than making administrative and political immune from one another, actually serves to loosen the distinction between the two. When political and administrative are joined in a process of decision and implementation, it is easier to distinguish between them by marking politics as before and administration as after a procedurally-correct decision. But when they are not seen as joined in a political decisionmaking process a clear distinction between them is undermined.

In "Civil Disobedience," Arendt describes an institutional role for "outsiders" in administration, not just lawmaking. "These minorities of opinion would thus be able to establish themselves as a power that is not only 'seen from afar' during demonstrations and other dramatizations of their viewpoint, but is always present and to be reckoned with in the daily business of government" (CR, 101). She thinks that associations can be an important antidote to "problem-solvers" by bringing reality into their policies (CR, 11, 37). For example, in "Lying in Politics," Arendt recounts the way in which the attitudes and methods of the "problem-solvers" during the Vietnam War were "efficacious in shielding men [including themselves] from the impact of reality and in ruining the mind's



capacity for judgement and for learning” (CR, 40). In her discussion of overclassification of government information, she stresses the importance of “access to what [people and their elected representatives] must know to form an opinion and make decisions...” (CR, 30).

Practices that reflect the spirit of Arendt’s insistence on institutional space for “minority opinions” include finding a role for bodies of citizens, such as resident councils, consumer groups, and environmental groups, who opposed the policy in finding ways to build flexibility, revisability, and reversability into implementation. Other examples might include working through the logistics of granting exceptions to regulatory policies such as nursing home standards, the tradition of demonstration programs that explore reactions to policies as a part of implementation, and the body of law that determines standing to sue based on the potential of irreversible environmental consequences that leave no possibility of reconsideration.<sup>34</sup>

But the right to participate, and bring opinions into public, according to Arendt, has a difficult time competing with the nature of representation and the actual process of addressing public tasks through government. Representative government has a tendency to dampen the “revolutionary spirit” so the power vested in the people reverts to their representatives as either experts or rulers. Where people select representatives who are expected only to carry out specifically the will of the people, the “...government has degenerated into mere administration... political matters are those that are dictated by

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<sup>34</sup> In this way, her work suggests a role for dissent that goes beyond making dissent a part of institutional memory as argued for by people like Barber (1984), Mansbridge (1996), and Disch (1994).

necessity to be decided by experts, but not open to opinions and genuine choice; hence there is no need for Madison's 'medium of a chosen body of citizens' through which opinions must pass and be purified into public views" (OR, 237). And where representatives are supposed to act on their own best judgement, they are simply rulers. When government acts to implement "will," either of the people or of representatives, its executive arm must develop policy that stays within the confines of interpreting will. Administrators are not authorized to incorporate views that are contrary to that will because this would amount to continuing political contest after a procedurally-correct decision is made. So administrators are authorized to exclude consideration of post-decisional opposition. The result is that "mere administration" is not only non-political, it is also non-partisan because it thinks of its tasks as removed from party contest (OR, 237).

So good government must have a third element - its authority from keeping the world and the "right to be a participator" must be joined by a notion of dissent according to which consent does not extend to specific policies, so that government officials are compelled to limit claims on behalf of their programs to their potential for bringing improvement rather than progress (CR, 83). This "principle of opposition," because it legitimates dissent to specific policies or laws that have already been decided, goes well beyond calls for participatory administration that claim that the participation of associations is valuable and "authoritative" because they know what will is. Rather, Arendt asserts the independent value of a choice that exceeds representative will. "In a society under the sway of abundance, conflicting group interests need no longer be settled at one another's expense, and the principle of opposition is valid only as long as there exist

authentic choices which transcend the objective and demonstrably valid opinions of experts” (OR, 272).<sup>35</sup> Dissent to government policy should not be immediately understood as revolutionary resistance to law, nor as an illegitimate effort to assert partial interests through the backdoor, but as an invitation to judge opinions that are not suited to representation, and as an aspect of the authority of policy implementation.

What is distinctive about the Constitution, for Arendt, is that it embodies a particular “concept” of law in which consent does not extend to specific policies (CR, 83). Arendt writes that this *tacit* consent “must be carefully distinguished from consent to specific laws or specific policies, which it does not cover even if they are the result of majority decisions” (CR, 88). A political system that separates power and law creates a durable framework that outlasts individuals and interests by creating a public document that is a repository of consent but not will. As she explains, “...in the republican form of government such decisions are made, and this life is conducted, within the framework and according to the regulations of a constitution which, in turn, is no more the expression of a national will or subject to the will of a majority than a building is the expression of the will of its architect or subject to the will of its inhabitants” (OR, 164). For this reason, she thinks that it is misguided to justify administrative activity that faces dissent by claiming that government policy implements a sovereign will.

This contrasts with Wilson’s view in which political decisions, because they are a result of a legitimate process of generating decisions that are to be implemented by

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<sup>35</sup>Arendt argues that “The crucial feature in the student rebellions around the world is that they are directed against the ruling bureaucracy” (CR, 178).

government officials, cannot suffer the intervention of public dissent. Wilson's "authoritative critic" is not sufficient to the dignity and diversity of power because it anticipates only weighing in on the interpretation of a will that is stated in policy. Arendt's associations go beyond critiquing interpretations of will because they introduce something that is not capturable through representation. Where Wilson thinks that, "seeing every day new things which the state ought to do, the next thing is to see clearly how it ought to do them" (Wilson 1970, 135), Arendt thinks that "as long as we believe that we deal with ends and means in the political realm, we shall not be able to prevent anybody's using all means to pursue recognized ends" (HC, 229). The question, for Arendt, is not whether means/ends calculations have a place in human affairs, but whether they should serve as a model for all of human life. "The issue at stake is, of course, not instrumentality, the use of means to achieve an end, as such, but rather the generalization of the fabrication experience in which usefulness and utility are established as the ultimate standards for life and the world of men" (HC, 157).

Administrators often struggle to achieve a balance between what can be expressed through statements of singular public will and what only comes into public when the world is illuminated through exchange of conflicting opinions. Arendt argues that striving for this balance means that political actors and administrators in a good government must shift the way they frame their goals and understand the results of their chosen policies so that such policies include short term goals that seek a change of circumstances rather than long term goals that are designed to deliver progress. Throughout her work, this "change of circumstances" plays a crucial role, complicating the question of her stance toward

practical issues. For Arendt, changing the world is about changing circumstances and creating a new starting point for action. “Only when in future history a new event occurs will this ‘end’ reveal itself as a beginning to the eye of future historians ...only in action will we proceed, as a matter of course, from the changed set of circumstances that the event has created, that is, treat it as a beginning” (UP, 389). And the tenuous hold of our circumstances over us also means that factual truth itself is susceptible to manipulation. And the liar, too, “wants to change the world.” As Arendt explains: “That we can change the circumstances under which we live at all is because we are relatively free from them, and it is this freedom that is abused and perverted through mendacity” (BPF, 250). This means asserting the freedom that comes from recognizing facts as facts, and facts as starting points for action: “...the historian, as well as the politician, deals with human affairs that owe their existence to man’s capacity for action, and that means to man’s relative freedom from things as they are” (CR, 11).

But “changing circumstances” must also form a limit to the claims administrators are permitted to make. Rather than delivering progress, administration in public makes visible changes in the circumstances of the world. So, on one hand, the products of *homo faber* “give the human artifice the stability and solidity without which it could not be relied upon to house the unstable and mortal creature which is man” (HC, 136). Public administrators perform the diverse functions of relieving pain, erecting a human home, and facilitating the highest of human capacities - speaking and acting (HC, 173). But on the other hand, administrators exercise this authority in the context of the exchange of political opinions and the attitudes that accompany a sense of freedom from circumstances

that make up part of the changing fabric of the world. One way in which this freedom manifests itself is in the surprising reactions and receptions to policy that can undermine and even entirely change the meaning of policy.

In contrast to good government, according to Arendt, expert and representative government use social science to manage conflicts between interests, and view their work as changing circumstances in order to change reactions. Arendt explains that social science approaches

...all implicitly or explicitly assume that human nature is always the same, that history is the story of changing objective circumstances and the human reactions to them, and that interest, rightly understood, may lead to a change of circumstances, but not to a change of human reactions as such. 'Scientism' in politics still presupposes that human welfare is its object... (OT, 347).

But in its focus on welfare, it forgets about the stubbornness of opinion. While expert government makes decisions based on a view of progress and representative government implements policy in line with majority decisions, they both assume that reactions depend upon one's position of the available positions. Totalitarian bureaucracy takes this one step farther and seeks to change reactions by remaking human nature.

Administrators in a good government, however, implement policies that address themselves to the factual circumstances, but do not assume that "reactions" are part of the factual. This approach displays what Arendt calls the "political attitude toward facts" that "tread[s] the very narrow path between the danger of taking them as the results of some necessary development which men could not prevent and about which they can therefore do nothing and the danger of denying them, of trying to manipulate them out of the world" (BPF, 259). Efforts on behalf of changing circumstances start with these conflicts

but do not take the reactions to them for granted. Instead, administrators in a good government see these reactions as part of the implementation of policies directed to keeping the world.

Political actors, for their part, cast their demands in terms of goals for changing circumstances that are “determined, limited, and obtainable” (OT, 311). This insistence on specific goals seeks to direct the use of coercion to refuse ideological goals and keep sight of the world (CR, 98). In this spirit, she writes that “...violence can remain rational only if it pursues short-term goals” (CR, 176). Short-term goals in this sense do not represent an unfolding plan or implementation of a necessary law. But also insisting upon the specificity of policy goals reflects the fact that opinion demands a place in public, in contrast to a merely critical role. Arendt’s understanding of public opinion is decidedly different than the public’s role anticipated by an expert approach to public policy. For example, in an interview about globalization, Nemat Shafik (2002), a vice president at the World Bank, said that anti-globalization protests are important for pointing to problems, but that it is the role of “insiders” to come up with a solution. Political actors reject this exclusion of the non-expert, which is tellingly in this example an exclusion of the non-insider, as well as rejecting ideological solutions that do not address the reality of the world.

This account is similar to Honig’s view of the way in which Arendt sees authority arising from deauthorization. Honig draws from Arendt’s work an understanding of politics as contest and resistance to arrangements that treat public life as matters for administration. She argues that for Arendt power tries to “protect the spaces of politics”

by illuminating the world in between them that relates them but also points to their differences, and that republican institutions, including the separation of power (Honig 1993, 117), are designed to assist power in this regard. Honig asserts that, for Arendt, “[t]he republican recognition that difference and plurality are the sources of power is manifest in the republican commitment to an institutional separation of powers, a commitment born not of a fear of power but of devotion to it” (Honig 1993, 111).

Honig thinks that Arendt strongly distinguishes between politics and administration, to the point of creating “binary oppositions,” and misguidedly excluding social issues from the public realm (Honig 1995, 144), although Honig finds some positive elements in this distinction. For example, she suggests that resistance to administration can be read as resistance to normalization. Honig contrasts Arendt’s characterization of such issues in On Revolution with that in The Human Condition, where the account of national housekeeping reflects concerns that are not as “urgently irresistible” as the bodily necessity that pushed the French revolution ahead of it, so that the account in The Human Condition might be more profitably read as a discussion of normalization (Honig 1995, 139). Honig, differing with Pitkin, points to the “promise” in Arendt’s critique of representational government that “projects false commonality of identity and interests that is impositional, and ill-fitting” (Honig 1995, 149). In addition, Honig considers the advantages of such distinctions. For example, she points out that the public/private distinction serves to protect both public and private spaces (Honig 1995, 145). She points to Arendt’s claim that viewing politics as an attempt to overcome diversity can result in “the exchange of the real world for an imaginary one where these others would simply not



exist” (Arendt cited in Honig 1993,117).

Honig does think, however, that the distinction between administration and politics works to exclude certain issues entirely from the public sphere. To make Arendt’s work in this regard more palatable, Honig argues that theorists have to reconstruct the distinction so that the content of administration and politics is itself subject to contest. And she thinks an approach more suitable to conveying the importance of contest over administrative issues is implied by Arendt’s own writing. “Arendt insists that her public-private distinction is nonnegotiable, but its politicization and attenuation are called for by her own account of politics and action” (Honig 1993,118). On Honig’s account of Arendt, institutions of the modern administrative state displace action and political freedom with the guarantee that it will address bodily needs. “‘Occupation’ might not be a bad term for what Arendt describes as the ‘rise of the social’ and the displacement of politics by routinized, bureaucratic, and administrative regimes” (Honig 1993,122). For Honig, a suitable reconstruction of Arendt’s work on this point centers on her concept of authority. “Since on Arendt’s account the practice of authority consists largely in this commitment to resistibility, the practice of authority turns out to be, paradoxically enough, a practice of deauthorization.” Dissent becomes “*part* of a practice of authority and not simply an unauthorized assault on the institutions of authority from some outside” (Honig 1993,115). Instead, “the real source of authority in the republic... would be the style of its maintenance, its openness to refounding and reconstitution...” (Honig 1995,138). Honig claims that “[t]he mark of true politics, for Arendt, is resistibility and a perpetual openness to the possibility of re-founding” (Honig 1993, 116).

But Honig does not sufficiently address that aspect of the administrative side of “republican institutions” that distinguishes it from government by bureaucracy by addressing the world’s need to be kept. Two points follow from this issue. First, administration can itself be understood as “deauthorized.” The source of authority for good government is that it takes its understanding of the world it is engaged in keeping from political actors who often call its authority into question. Where the “deauthorization” of politics comes from the fact that its founding is subject to resistance, the “deauthorization” of administration means that its effectiveness is subject to interruption. Administrative officials earn respect when effective in changing the world for the better, but changing the world includes the unpredictable reactions and meanings that make up the world.

Second, government’s works often amount to a “fait accompli” and viewing this as an element in limiting government’s claims to deliver progress can play a role in understanding the way Arendt sees administration in a good government as existing alongside political contest. This contrasts with Honig’s claim that fait accompli and a continuation of political contest are incompatible. Honig argues that

In Arendt’s politics, institutions and individuals are always incomplete, forever calling out for augmentation and amendment. ...Arendt’s politics is never a fait accompli (Honig, 115).

It is true that a political act, in the spirit of revealing the world, seeks the attention that comes from beginning rather than completing. But Arendt thinks that political actors must view themselves as dealing with *nothing but* “fait accompli.” This is because when a policy achieves a “fait accompli” it gains authority by virtue of the new fact it has created,

but its claims to authority are limited if it is only authoritative because it has changed circumstances. This opens the door to further political contest, though the contest itself may also have changed. Arendt thinks that it is important not to underestimate how often administration must and does implement policies in the absence of political consensus or even attention. Political actors do not represent merely resistance to pure administration, but also experimentation to see which of their specific goals correspond with the bounds of community delineated by the executive power. Thus, the dilemmas of separating power in order to preserve it shift one's attention to the way administrative authority is not only limited to interpretation of will, but also limited by the demand to continue politics when law takes shape in policy.

In contrast to the view of Arendt as unfailingly segregating administration and politics, the role of opinions in good government means that, for Arendt, administrative projects cannot be assumed to be free of political implications.<sup>36</sup> Her view that opinion, and not interests, can appropriately provide resistance raises the criticism that this distinction between interest and opinion, and the administrative/ political difference to which it relates, presupposes what is most difficult - criteria for determining when coercive administrative sanctions are justified, and obscures that progress toward justice is the appropriate criterion. Some argue that Arendt, by suggesting that dissent to specific

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<sup>36</sup> In contrast, Jane Mansbridge, in "Using Power/Fighting Power," claims that the picture of the relationship between coercion and participation found there is problematic. She writes that "Many of the best contemporary political theorists [including Arendt, Sheldon Wolin, Michael Walzer, and Jurgen Habermas] have not faced squarely the role of conflicting interests, and consequently of coercion, in any democratic polity," and Hannah Arendt, in her view, is the "least subtle and... the most misguided of these deliberative theorists" (Mansbridge 1996, 48). Similarly, but in a more favorable light, McGowan (1997) considers whether Arendt's "nonviolent" political realm is a response to the violence of totalitarianism, a kind of utopianism.

policies can be acceptable and assigning such a prominent place to dissent, undermines administration as implementation of law (justice) and subverts the use of explicit criteria both for control of the administrative power and for the limitation of discretion in favor of illegitimate, partial interests. This continuation of political contest impedes the ability to deliver justice when those opposed to the policies dissent in a strategy of purposeful deferral of implementation.

For example, Hanna Pitkin, in "Justice: On Relating Private and Public," thinks that Arendt is misguided in her abandonment of criteria like "progress" toward justice. She argues that an appropriate employment of the concept must include both the ideal and also changes that move the world toward that ideal, a connection that, according to Pitkin, Arendt makes impossible by focusing exclusively on politics as a means to distinction. In her view, "unlike the metaphorical legislation of Kantian morality, political action must look not only to rightness but also to effectiveness and can in general *be* right only if it is also effective" (Pitkin 1994, 280). Policies can only be just if the world is welcoming and if the changes they promise actually occur. She thinks that Arendt, in her effort to discard all factors that might determine, and so destroy, politics, threw out the baby (justice) with the bathwater (economic and social concerns that define individuals) (Pitkin 1994, 274). Pitkin claims that "it is precisely justice and concepts like it, banished by Arendt, because they tie morality up with expediency, that enable us to make the transition from ... 'I' to 'we'" (Pitkin 1994, 281) and to the "perennial political question" of what "we" shall do. In other words, in order to achieve what I want, I must shift from myself to the collectivity, and this entails a recourse to "justice" since publicity works against other

types of claims. With this shift, *homo faber* is made to rework their claims into public language, and *homo laborans* sees their privations as remediable and therefore unjust for the first time (Pitkin 1994, 282).

However, Arendt's rejection of progress, and her related unease with moral imperatives such as justice, stem from her different understanding of both sides of Pitkin's description of justice - rightness and effectiveness - with the result that Arendt begins with a concern that effectiveness be subject to interruption, rather than that rightness be made effective. First, with regard to "rightness," it is misleading to claim that she "banishes justice" from consideration. Arendt explains that she is opposed to making justice the ultimate standard because it leads to an absurd choice, as in Kant, that justice should prevail in a battle that will leave only either the world or justice (BPF, 228). But she expects that most people will agree with this point. Short of this extreme choice, Arendt does not oppose moral motives as such, but those that claim they are part of progress. Her discussion of the student movement of the 1960's reveals this more complex stance.

In this discussion of the failure of student uprisings in 1968, Arendt recalls the dilemmas faced by nineteenth-century revolutionaries driven by the notion of "progress." They came up against the inevitable paradox of reconciling what she calls the "problem of 'disinterested' leaders" and the "nonspeculative down-to-earth interests of the working class." She traces the emergence of revolutionary notions of progress from the seventeenth century idea of an accumulation of knowledge over the centuries rather than within a lifetime, through the rise of the eighteenth century belief in the "education of mankind'... whose end would coincide with man's coming of age" (CR, 127). In this

sense, “Marx’s classless society seen as the realm of freedom that could be the end of history - often interpreted as a secularization of Christian eschatology or Jewish messianism - still bears the hallmark of the Age of Enlightenment” (CR, 127). Because they believed that progress meant the development of potential, the revolutionaries did not view their work as bringing anything new into being.

In contrast to the disinterested interest of these revolutionaries in “progress,” however, the students wanted to “be moral” (CR, 125), and in this sense, the student rebellion was new and unexpected. In its very self-interested (deliberate choice to be moral so they can live with themselves) moral stance, it surprised those who were running the economy and universities only in reply to economic self-interest, without recourse to the morality of individuals. And while this morality also does not describe the content of the movement (which was directed against the glorification of science and its claims to have the key to unlimited progress) (CR, 132), it delivers a surprise that links it importantly to a political stance, even though a failed one.<sup>37</sup>

Arendt also differs with Pitkin on the second half of her account of justice: “effectiveness.” The problem for Arendt is not simply how to make the right decisions effective in the world, but that automatic processes often are terribly effective without any link to human motivation. While Pitkin does not claim that if an action is effective it must be just, she does imply that if it is just it is potentially effective. Arendt thinks this potential for effectiveness does not tell us much about the act. Instead, she worries that

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<sup>37</sup> Arendt claims that their moral stance made it difficult to garner allies outside the universities, and that the Black Power movement had somewhat more success because it appealed to the community (CR, 126).

“we can take almost any hypothesis and *act* upon it, with a sequence of results in reality which not only make sense but *work*” (BPF, 87). In her discussion of Jaspers, she observes that the situation of global interaction in which Jaspers found himself looks very different from that hoped for by Kant. “Mankind owes its existence not to the dreams of the humanists nor to the reasoning of the philosophers and not even, at least not primarily, to political events, but almost exclusively to the technical developments of the Western world” (Arendt 1955, 82).<sup>38</sup> These developments in global communication “were designed side by side with the means of possible global destruction.” And the common present they deliver “...is not based on a common past and does not in the least guarantee a common future” (MDT, 83).

This ambiguity of effectiveness as an indication of what should be done leads her to reject Kant’s view of progress and assert the importance of the world as the proper locus of change, rather than life or a cosmopolitan future which leaves the present out of consideration. She insists that Kant did not sufficiently appreciate the importance of his observation that “it will always remain bewildering... that the earlier generations seem to carry on their burdensome business only for the sake of the latter...” (Kant cited in CR, 129). His embrace of the notion of progress makes this situation inevitable and particularly dangerous when the present is seen as properly serving the future. When the present is treated solely in terms of its suitability for development or amenability to the “right” policies, its factual reality, as a bearer of material and cognitive incongruities, and its role

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<sup>38</sup> Future references to this title are abbreviated as MDT.

as a starting point for action are denied.<sup>39</sup> When a decision is made in the public sphere, it claims a potential for implementation. But that potential is always susceptible to facts in the past and actions in the present, that exceed issues of feasibility, consensus, and justice.<sup>40</sup>

Rather than starting with the notion that right policies - as identified by deliberative actors who direct themselves to "justice" - must be carefully designed and implemented so they are also effective (for which officials have to be able to predict reactions), Arendt begins by demanding that effectiveness, to be right, must be subject to interruption because the meaning of policy for individual lives - as distinguished from its goals, motives, and principles - emerges through implementation. Administrators look to political actors to find aspects of world that are objectively shared, but cannot exhaust the meaning of public policy. As Arendt explains in "Philosophy and Politics," the individual's *doxa*, what appears to the individual as individual, partakes of the "objectivity" of the world, the "fact that the same world opens up to everyone and despite all differences between men and their positions in the world - and consequently their ... opinions - 'both you and I are human'" (Arendt 1990, 80).<sup>41</sup> However, the works of good government do

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<sup>39</sup> Arendt explains that facts and politics clash at the lowest level of the human sphere, where necessities are at stake. "...it is only by respecting its own borders that this [political] realm, where we are free to act and to change, can remain intact, preserving its integrity and keeping its promises" (BPF, 264).

<sup>40</sup> Hinchman and Hinchman point out that Jaspers rejected Kant's "juxtaposition of 'two worlds,' one real and objective, the other merely possible and postulated," and held instead that the same world took on different characteristics whether the subject of study or a place for action and affirmation of identity (Hinchman and Hinchman 1994, 145). They find a similar approach in Arendt. But from this perspective, it is hard to account for her concern for building a world, and for fully appreciating the danger inherent in rolling potential and actual into one through (1) the denial of facts and (2) the justification/ legitimation of communicative reason.

<sup>41</sup> Future references to this title are abbreviated PP.



not conform to a story of progress known in advance by experts. “In contradistinction to other elements peculiar to action - above all to the preconceived goals, the impelling motives, and the guiding principles, all of which become visible in the course of action - the meaning of a committed act is revealed only when the action itself has come to an end and become a story susceptible to narration” (MDT, 21).

Still, however, this characterization of administration seems lofty in comparison with her repeated references to the administrative sphere as the “most social form of government” and manifesting an ideology of the national household. For example, in “What is Freedom,” Arendt writes that “...where life is at stake all action is by definition under the sway of necessity, and the proper realm to take care of life’s necessities is the gigantic and still increasing sphere of social and economic life whose administration has overshadowed the political realm ever since the beginning of the modern age” (BPF, 155; HC, 28).

So it must be noted that this analysis focuses on those moments when institutional questions about administration as a part of good government, rather than administration as a manifestation of the rise of the social, make their way into her conflicted account. The focus on administration as a part of good government can be contrasted to Hannah Pitkin’s study of Arendt’s concept of “the social.” In The Attack of the Blob, Pitkin presents an extensive analysis of this aspect of Arendt’s work. Space does not permit addressing each aspect of her overall claim that Arendt has mystified a problem that is not solvable, and so obscured the partial settlements we make around the issue. For Pitkin, this signals the double-sided tension between micro and macro perspectives, and between

determinism and free will that faces any attempt at political theorizing (Pitkin 1998, 241). The point is not to refute Pitkin's work in general, whose question is much larger - reviewing and cataloging the tensions between the individual and the world that impede collective action - but to show the limitations of appraising Arendt's views of administration only from within the prism of "the social," especially in crippling attempts to understand what she means by "the world." For Pitkin, Origins of Totalitarianism marks the appearance of the social as "blob," and Arendt's panic over the related dominance of administration as the mode of public action.

In attempting to map Arendt's concept of the social onto the labor, work, and action schema in The Human Condition, Pitkin finds a mixture of overlapping and inconsistent views about the conformist social and the economic social in which social structural difficulties and not just individual failings contribute to the loss of action in the modern world. Later, in On Revolution, according to Pitkin, Arendt "excises the blob" as she has finally seen the tension clearly as a problem rather than a metaphorical construction.

The problem in On Revolution about institutionalizing spontaneity, about somehow "thinking together" these mutually inconsistent ideas is not new to Arendt's work. ... What is new ... is not this problem but Arendt's explicit recognition of it as problematic. Previously it was hidden by the social as Blob; now it is recognized, even if not solved (Pitkin 1998, 219).

Pitkin casts the interrelated tensions represented by the "blob" imagery in terms of a theorization of individual and collective agency (Pitkin 1998, 242).

But approaching the set of issues from a distinction between bureaucratic administration and public administration suggests a different and more limited question.

What claims can government make to our loyalties and efforts? From the perspective of public administration, rather than the social, the central paradox is that administration by government (1) keeps the world, in which power can emerge, from falling apart,<sup>42</sup> but (2) risks displacing power. This dilemma is slightly different than both tensions Pitkin highlights. For instance, Pitkin says Arendt unknowingly reflects the micro/macro tension in her dichotomy between political and social. Pitkin says that Arendt focuses on

the distinction ... between two contrasting forms of human collectivity: the political form, in which unique, autonomous individuals join together freely in a collectivity of which they together take charge, and the social form, in which isolated but identical, helpless units are compressed into a monolithic mass by a force they experience as external and of which they cannot take charge (Pitkin 1998, 244).

But to the extent administration, *as a part of* “good government, rather than *as a form of* government (“the most social form”), builds the world, alongside political actors, individual experiences of effectivity or helplessness are intertwined. Actors and administrators cannot know in advance whether political or administrative refusals will predominate.

Similarly, the free will conundrum, according to Pitkin, informs many of Arendt’s inconsistent statements about freedom, necessity, and action. For Arendt, Pitkin argues,

the only real or true freedom is participation in shared self-government... She does not acknowledge, and probably does not see, the extent to which her own teachings about political freedom depend on the free will conundrum more broadly construed, how the very idea of action presupposes something like free will, and how her distinction between freedom and necessity is another version of the same conundrum (Pitkin 1998, 245).

When public administration is seen in a positive light, however, the question becomes

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<sup>42</sup> And our world demands such attention partly because of its past construction.

whether we can deliberately establish “good government” or whether “accident and force” (OR, 214) will always determine the way the coercive power of government acts in our lives, and whether part of a government’s claim to our affection turns on whether in addressing “necessity” it recognizes the political choices that might cause us to turn away from solutions.

On one hand, Arendt insists upon limiting the claims that administration can make to our affections, but admits that it addresses certain problems of logistics or interests, that may lie outside the scope of associational activity. “The councils were incapable of understanding to what enormous extent the government machinery in modern societies must indeed perform the functions of administration” (OR, 273). Power cannot insulate itself from the stubbornness of the things of the world. On the other hand, where associations forget their ability to interfere with such administrative determinations, everyday problems either vanish (as under totalitarianism) or are elevated above all other concerns, neither of which is desirable. To keep administrative activity in perspective, the world itself must be kept in view, so that the fabricating element of administration is evident. Administration as a part of “good government” may be an asset, but individuals have to see their own world reflected in it. Government administration cannot seamlessly carry out its tasks of “national housekeeping” for, unlike *homo faber*, it cannot cut itself off from both the reality and political demands of the world. Arendt insists that those who “keep” the world, rather than simply living in it, “demonstrated that they care for more than their private happiness and are concerned about the state of the world...” (OR, 279). And this care differs from the control the fabricator can wield over its object because “man

is only the master, not the creator of the world” (OT, 302). The question is not whether to choose administration or politics, but how to prevent the “principle of motion” from defining the relationship between action and administration.

So, Arendt begrudgingly admits the role that administration plays when power is separated in a modern constitutional and administrative state. Governments have to perform certain administrative functions, but this threatens the notion that politics means “the effective right to be a participator.” She refuses to provide even a temporary resolution to this tension that might come from the comforting belief that law and its professional implementation amount to political freedom. On a visceral level, Arendt regrets this inevitable necessity of administration, and displays obvious unease with this arrangement.

#### **SECTION 4: CONCLUSION AND REMAINING QUESTIONS**

In this chapter, I have tried to show that Arendt is concerned at many points in her work with articulating what is needed to have administrative action in the world without stifling political freedom. She insists upon the distinctiveness of bureaucracy, and the way in which, under its sway, motion determines politics through policy based in logic that excludes the possibility of action interfering with implementation. Through her study of the theoretical and institutional implications of the American case, Arendt finds a concept of law and a practice of representation that, at its best, can provide such administration by keeping the world that includes political actors that may challenge their authority.

Section 1 discussed the tension between two different views of the relationship

between politics and administration found in Arendt's work - one in which politics and administration are separate, and another in which they are intertwined. The two formulations together point to different concerns that exist in uneasy balance - the concern for preserving a public sphere from the homogenizing claims of necessity, and the realization that these prepolitical issues of necessity cannot let the political alone. These two conflicting concerns point us to those moments where the distinction between administrative and political breaks down and the more complicated relationships between self and citizen, interest and opinion, and private and public emerge. It is significant and appropriate that at several junctures Arendt chooses housing - where these poles are often brought into visible tension - to explore these issues, for housing holds intrinsic importance for her as a "tangible worldly place of one's own" (HC, 70). From such a place, the distinction - between administrative questions of means and ends, and the political attitude that gives meaning and allows action around rational, administrative questions - retains its importance.

After all, however, administration occupies an ambiguous place in Arendt's esteem. Arendt's notion of administration keeping the world draws on a range of concepts foreign to Wilson's universe, and lends to administration a positive role that Wilsonian professional civil service could never play. In her, admittedly romantic, version of a republic, only those who select themselves because they desire public happiness, should participate in the political sphere. But, in the modern, centralized state, when these "voluntary members of an 'elementary republic' [who] have demonstrated that they care for more than their private happiness and are concerned about the state of the world" (OR,

279) emerge and demand to be heard, the representative claims of the administrative sphere meet their limits.

And with this insistence upon the limitations of separation, in which political contest is as much at home during the implementation of policy as during decisionmaking, an important question remains in how to control and guide administrators in their handling of dissent. Arendt is much more concerned with how associations resist administrative imperatives than with deciding what those imperatives will be. This is problematic especially given that administration treads on the terrain between associations, invoking relations of equality that are established between participants in the public sphere. Arendt rejects the self-referential claim that majority policy reflects community and so is entitled to deference, but some argue she provides no alternative method of linking the effectivity concerns that drive administrative centralization to the non-representable opinions that lead associations to demand participation. However, she does provide a different approach, and its outline becomes clearer in contrast to Habermas's recent work on the significance of administrative power as the implementer of communicative power.

### CHAPTER 3 - JURGEN HABERMAS ON ADMINISTRATION IN THE LIBERAL STATE, THE WELFARE STATE, AND THE RISK SOCIETY

If Arendt leaves one with the question of where and how administration receives direction, this is the question with which Habermas begins his most recent work on administration. As a central figure in returning deliberative democracy to a prominent place in political theory,<sup>1</sup> he devotes considerable attention to the theoretical edifice that will support the subjection of administrative power to deliberative procedures that bring together participation and the rule of law. In the introduction to Between Facts and Norms, Habermas says that he hopes to work the idea that “rule of law cannot be had or maintained without radical democracy” from a hunch into an insight (Habermas 1996a, xlii).<sup>2</sup> His characterization of administration plays a central role in this task.

A crucial aspect of his approach is a rejection of the notion that collective action problems require a separation between democratic legitimacy and effectivity, and an anti-democratic reliance upon administrative expertise. Habermas says that he refuses to accept the historical account that claims that increasingly complex problems undermine, and even call into question, a reliance on democratically derived law. “According to this scheme, the state had to specialize initially in the classical task of preserving order, later in the just distribution of social compensations, and finally in the management of collective risks” (BFN, 434). And with each step, according to this account, the state forms that corresponded to changes in society moved farther from the possibility of resolving conflict

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<sup>1</sup> Elster (1998).

<sup>2</sup> Future references to this title are abbreviated BFN.



with the aid of law. “Only the classical administration of the liberal period can adequately solve its tasks with the normative instruments of law; the administrations of the welfare and security states rely on expanded monetary resources and a new knowledge base - and must, in adapting to a cognitive basis for action, distance themselves from the normative instruments of law” (BFN, 435). Thus, this account argues, in modern constitutional states one finds a conflict between the goals associated with constitutional principles, on one hand, and planning or regulation, on the other (BFN, 436). And, according to this account that Habermas criticizes, the challenges posed by globalization mean that administrators should be empowered to act without democratic mandate in order to tackle the technical problems of reducing environmental and other risks.

But Habermas refuses such a conclusion, arguing that, rather than presenting a new set of circumstances that irreconcilably challenges the predominance of law, globalization reflects the old problem of the “diminishing binding power of regulatory law” (BFN, 436), and must be dealt with through normatively-derived procedures for lawmaking.<sup>3</sup> And, even where cognitive considerations must play a large role (for instance in determining the range of alternatives that will slow global warming), he doubts that administrators are informed only by the factual questions related to implementation and problem-solving. Instead, they often make what amounts to unreflexive decisions on

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<sup>3</sup> In a sense, this account reflects an old debate about how to balance two conflicting ways of judging administration. One says that administrators should be viewed as political actors with independent knowledge and goals, and judged in terms of the desirability of the results they produce. Another thinks that administrators should be viewed as functionaries and judged on the basis of how well they manage to uphold the intent of political decision makers, whatever the content of the political will. Sossin calls this a “Weberian dilemma” because it reflects the tension between effectiveness and democracy that is such a central part of Weber’s writings on bureaucracy (Sossin 1993).

normative questions, like desert and responsibility, without reasonable criteria to guide them. “If one starts by asking how the system of rights can be realized in view of the growing complexity of administration, the sociological periodization of administrative types turns out to be too crude” (BFN, 436).

In place of this view of administrators as the illegitimate though effective saviors of a complex world, Habermas in his recent work proposes “government by law,” in which “...law [is] the medium through which communicative power is translated into administrative power” (BFN, 150), and “only the administrative system itself can ‘act’” (Habermas 1996b, 29).<sup>4</sup> Building on his earlier work that explored the dilemmas of administrative power in the liberal and welfare states, administration is no longer a subsystem with a seemingly incidental link to legitimation, and a regrettable tendency to invade the lifeworld. Now it is explicitly designated as the only legitimate means for communicative power to make itself felt in the public world. In this light, the earlier pictures of administration in his work, as merely limited by law or as stumbling over the boundaries of the lifeworld, can seem pallid and weak.<sup>5</sup>

Central to understanding Habermas’s account of legitimate administrative power is

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<sup>4</sup> Future references to this title are abbreviated TNM.

<sup>5</sup> One of the most prominent features in Habermas’s writing is an insistence on the conceptual and practical distinction between economy, administration, and lifeworld. His insistence manifests both methodological and normative concerns. On the methodological side, the spheres bring distinct contributions to the project of social integration that must be analyzed according to different logics. On the normative side, the lifeworld demands autonomy from both the economy and government. But there is another normative concern that produces tensions with the methodologically-driven separation, namely the concern with emancipation. In its desire for emancipation, the lifeworld demands not only identification of a generalizable interest, but its implementation. In other words, the lifeworld wants autonomy but also to deploy administrative power in favor of a generalizable interest. For this reason, in his most recent work, government administration is a crucial element in the constitutive tension between intervention and emancipation that both generates the public sphere and gives it its focus.

that he construes administration abstractly rather than institutionally.

The talk of “legislature,” “judiciary,” and “administration” suggests an overly concrete understanding led astray by inherited forms of institutionalization. Such a view misses the level of abstraction at which we have sketched the discourse-theoretic specification of the *functions* of legislation, application, and implementation (BFN, 193).

Habermas starts with a claim that law that arises from a procedurally-correct process of collective will-formation is the only medium that can integrate the various components of a complex society, and administrative power that implements such law is the completing moment in the political process. On one hand, this approach deepens the traditional account of separate powers in which administrators have authority by virtue of their expertise on questions of means. But, on the other hand, Habermas’s approach goes well beyond the traditional account of administrative authority by claiming that administrators can legitimately consider questions of “ends” when the political argumentative process on a particular issue does not track the institutional separation of powers. And Habermas’s reconciliation of administrative and political through their status as different moments in the same political process differs from Arendt’s view according to which administrative practices take place alongside political practices. This chapter will explore the elements of Habermas’s view, while the following chapter will more directly contrast Habermas’s approach to Arendt’s account.

Habermas’s recent accounts of administrative power are informed by his early work on the liberal and welfare state accounts of administration. So to understand the administrative element of “government by law,” the chapter will trace the transformation of the concept of administration from his earlier works to his most recent statements.

Section 1 discusses Habermas's critique of liberal administration in The Structural Transformation of the Public Sphere, and his critique of interventionist or welfare state administration in Legitimation Crisis. Section 2 explores elements of administration under "government by law" that Habermas describes in Between Facts and Norms. Finally, Section 3 argues that Habermas's most recent work on globalization anticipates an extension of his model of administration into the international sphere.

## **SECTION 1: HABERMAS'S CRITIQUES OF LIBERAL AND WELFARE STATE ADMINISTRATION**

Habermas's recent accounts of administration as a part of "government by law" are best understood in light of his early work on the liberal public sphere and on systems theory. This early work provides important insights into the challenges Habermas thinks "government by law" faces in legitimizing administrative power. This chapter will revisit two important steps in Habermas's development of the notion of legitimate administrative power. First, the section will look at Habermas's account, in The Structural Transformation of the Public Sphere, of the emergence and deterioration of the administrative activities of the liberal state. The demise of the critical public sphere signals, for Habermas, the cooptation of administrative power by partial interests disguised as neutral rules, moral or economic, and illustrates the need to keep public administration tethered to a critical public rather than what Habermas calls a manipulative public. Second, the section will consider Habermas's critique of the welfare state, in Legitimation Crisis, that goes too far to get rid of partial interests by relying upon administrative

experts and excluding participation. Habermas argues that this tendency is best addressed through the critical perspective provided by communicative ethics and the notions of the generalizable interest and the ideal speech situation.

In The Structural Transformation of the Public Sphere, Habermas recounts what is often considered the first stage in the development of the administrative state, when activities were limited to the relatively uncomplicated tasks of keeping order. Habermas recounts a sequence in which the administrative activities of the “prince” became subject to critical public opinion and became “public administration.” He describes the emergence of a “public” administration subject to critical public opinion, until the critical public itself was exposed as seeking partial interests. He describes three elements in the emergence of such a public role for government: society and state came increasingly to be seen as separate, the state and administrative activities began to be seen as the opposite of private activities, and public opinion in the public sphere was helped along by the rise of the idea of constitutional law and by the increasing effects of the literary public sphere. The lasting importance of this picture of government, for Habermas, is that public administration emerged and separated from princely power at the urging of public actors. But keeping order through identifying rules, whether economic or moral, is not enough to truly separate administration from the partial interests of prince or commerce so that a general interest can be sought.

He describes what he calls “one blissful moment in the long history of capitalist development” (Habermas 1991, 79)<sup>6</sup> when a critical public sphere arose in opposition to a

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<sup>6</sup> Future references to this title are abbreviated STPS.

newly differentiated public authority, before it melted into society. The outlines of the political public sphere, its form and content, the role of the print media and the dynamics of political debate, have been well-covered in the secondary literature.<sup>7</sup> And Habermas has revised his understanding of the public sphere in important ways, responding to criticisms that arose in response to this early work. For instance, the feminist critique of his disdain for intervention is well-known, and Habermas has admitted the exclusion of such questions in his early work (Benhabib 1992; Fraser 1992). Others have pointed to the stubbornness of the problems arising from the bourgeois nature of the public sphere in this work.<sup>8</sup> Still others have pointed to the revisions to his model that are necessitated by the imperfect role of speech in public (Ryan 1992; Mansbridge, 1996).

Another important element of this work regards the relationship between this new public sphere and the increasing administrative capabilities of the state.<sup>9</sup> The complexity

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<sup>7</sup> See Habermas and the Public Sphere, 1992.

<sup>8</sup> Fraser calls for a post-bourgeois conception in "Rethinking the Public Sphere," and later describes what she calls a "postmodern public sphere" that moves beyond the mere bracketing of unequal access to the public sphere and demands the admission of interests considered "private" by bourgeois conceptions. (Fraser 1992, 1995) Eley suggests the public sphere is better analyzed in terms of hegemony (Eley 1992).

<sup>9</sup> Some scholars have argued that the social conditions amount to an unrecoverable historical moment that can and should be separated from his conclusions. For instance, Baker asks whether the public sphere is properly analyzed as historical moment or as a philosophical possibility. He claims that Habermas's work moves back and forth between the two approaches, with this early work focusing on the "*historical specificity*" of the formation, and his later work involving "precisely the effort of disengaging more explicitly the notion of the rational public sphere, as normative ideal, from the historical social formation in which it was first embedded..." (Baker 1992, 182). This section, however, focuses on Habermas's account of the way government tasks became the target of public critique, arguing in part that this helps illuminate the more serious attention he pays to administrative power in Between Facts and Norms. This is an important point but, taken too far, it obscures the importance of Habermas's choice of Great Britain as an exemplar, and it makes it difficult to appreciate how the search for an appropriate government form is a continuing element of Habermas's work. Later, when he incorporates a systems-theoretic perspective, his reflections on the governments that arose in Europe in the wake of absolutism contribute to his understanding of and normative recommendations for the administrative subsystem.

and new pressures associated with the rise of commercialism ushered in a differentiation of state and society that included a “sphere of public authority [that] assumed objective existence in a *permanent* administration and a *standing* army” (STPS, 18). The shifting political and social maps resulted in battles among the estates over how power should be distributed within the context of freeing markets (and the private sphere along with them) from regulation, and both the royal and the commercial power appealed to public opinion in their efforts to win control of the newly differentiated state power. In the process a new role for the state was being defined in the context of public opinion, and a new form of authority emerged that did not consist in simply splitting power further, but in basing power on legitimacy tied to public opinion.

Habermas describes this emergence of public administration as separate from both the royal and the commercial aspects of society in terms of, on one hand, the differentiation of the state from the prince through the doctrine of separate powers, and on the other hand in the way in which a balance between citizen and individual was maintained within the private sphere.<sup>10</sup> “The feudal powers, the Church, the prince, and the nobility, who were carriers of the representative publicness, disintegrated in a process of polarization; in the end they split into private elements, on the one hand, and public ones, on the other” (STPS, 11). Princely authority, for instance, split into the public budget and private holdings; and the bureaucracy and military separated from the court (STPS, 12). The public budget, based on taxation rather than public borrowings or private

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<sup>10</sup> Habermas draws upon existing studies about how such differentiation came about. For instance, Eley (1992) points to the influential role of Raymond Williams’s work to Habermas’s reconstruction.

financing, arose in support of the commercial economy and its efforts to establish foreign markets. It reflected the constitution of the “state with its bureaucracies and its increasing financial needs” (STPS, 17).<sup>11</sup> In a sense, then, the public sphere was originally called up by a new kind of ruler who needed to communicate its rulings to the new capitalist class, but this situation gave way as complexity shifted the relation between state and society, and allowed public opinion to force secrecy itself onto the stage.

The actors of the public sphere first posed a challenge to public authority in their role as commercial interests powerful enough to be a third estate, but ill-suited to fit in the old pattern of balancing power through dividing claims to rule. That a tense balance was maintained is not to say that public authorities welcomed the rise of the public sphere, or that the members of the bourgeois public sphere understood their fragile position.

Habermas recounts attempts to censor the press and close down coffee shops, and he notes the slow shift from critical to coopted debate in the public sphere. However, the claims to an autonomous private realm based on the proper role of citizens emerging from a condition of privacy marked a shift from absolutist public authority. “Under absolutism [the establishment of civil society] as a private realm was conceivable at first only in the privative sense that social relationships were stripped of their quasi-public character. The political functions, both judicial and administrative, were consolidated into public authority” (STPS, 74).

Crucial aspects of this separation of legislating and princely power included the

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<sup>11</sup> Walzer also recounts the end of feudalism’s equation of economic power with political right. “It took many years of local resistance, royal aggrandizement, and revolutionary activity before a clear boundary was drawn between the estate and the realm, between property and polity” (Walzer 1983).



space for the individual ushered in by a constitutional understanding of law and the enhanced role of public opinion. The political importance of the public sphere emerged “in the context of the controversy in constitutional law over the principle of absolute sovereignty,” and split the existing debate between the prince and the estates by demanding a new legislative power that was not a ruling power (STPS, 52). And the separation of state and society, the workings of the government alongside and under the critical eye of the public sphere, plays an important role in securing a space for the individual. “These rules, because universally valid, secured a space for the individuated person; because they were objective, they secured a space for what was most subjective; because they were abstract, for what was most concrete” (STPS, 54).

The importance of public opinion in this process arises with the fact that, from the point of view of participants in the public sphere, the state came increasingly to be seen as an object of criticism. “A political consciousness developed in the public sphere of civil society which, in opposition to absolute sovereignty, articulated the concept of and demand for general and abstract laws and which ultimately came to assert itself (i.e., public opinion) as the only legitimate source of this law” (STPS, 54). Actors in the political public sphere, according to Habermas, were prepared for this critical role both by their increasing participation in the commercial economy and by their participation in the literary public sphere. The public began to see itself as the “opponent” of a public authority charged with regulating aspects of private life, like prohibiting eating bread on Friday nights when wheat is scarce. “Because, on the one hand, the society now confronting the state clearly separated a private domain from public authority and because,

on the other hand, it turned the reproduction of life into something transcending the confines of private domestic authority and becoming a subject of public interest, that zone of continuous administrative contact became 'critical' also in the sense that it provoked the critical judgement of a public making use of its reason" (STPS, 24). In addition, the public could take on a critical role fairly easily by harnessing a press that had already been used by the state to make the private realm a public affair.

Habermas argues that the rise of this new set of actors - property owners pressing for their common interests - was preceded by the self-recognition of members of the literary public sphere as members of a common humanity. This fiction of one public gave rise to a critical stance. "As soon as privatized individuals in their capacity as human beings ceased to communicate merely about their subjectivity but rather in their capacity as property-owners desired to influence public power in their common interest, the humanity of the literary public sphere served to increase the effectiveness of the public sphere in the political realm" (STPS, 56). And they were not unmoved by the increasing recourse to public opinion by the state administration. "The public sphere in the political realm evolved from the public sphere in the world of letters; through the vehicle of public opinion it put the state in touch with the needs of the people" (STPS, 31).

Also, and this is something Habermas does not directly address, the literary public sphere prepares someone in the art of criticizing someone else's work rather than one's own. For example, with regard to public policy, they "disputed [with their] own government" rather than participated in the sense of the Greek *res publica* (STPS, 52). In this sense, Habermas's "public" is not made up of participators in government but a

collection of critics all concerned to force government to better execute those tasks that are wholly the government's responsibility. With the "rise of a sphere of the social, over whose regulation public opinion battled with public power, the theme of the modern (in contrast to the ancient) public sphere shifted from the properly political tasks of a citizenry acting in common (i.e., administration of law as regards internal affairs and military survival as regards external affairs) to the more properly civic tasks of a society engaged in critical public debate (i.e., the protection of a commercial economy)" (STPS, 52).

But, according to Habermas, this critical public was over time replaced by what he calls "manipulative publicity" (STPS, 178) that changed the relationship between politics and administration. Where administration had emerged as a realm separate from both the prince and commercial interests, it gradually adopted the interests of civil society for itself (STPS, 142). Whether those interests included economic or moral goals, the administrative state became a reflection of society rather than a site for criticizing elements of society. This shift meant that laws could no longer claim universality, and administrators could no longer claim to work for the general interest. "Since the separation of state and society was overcome and the government intervened in the social order through advance planning, distribution, and administration, the generality of the norm could no longer be maintained as a principle" (STPS, 178).

The structural transformation of the public sphere consisted of the gradual diminishment of the separation between state and society, a separation that had been established on the supposed generality of the interests arising in society and administered by the state (STPS, 178). "Interventionism had its origins in the transfer onto a political

level of such conflicts of interest as could no longer be settled within the private sphere alone” (STPS, 142). And with the transformation, the administrative power of government is put in the service of property owners. And this also, for Habermas, explains the growth of the state. He argues that as the class basis of the equation between property and citizen was exposed, the demands of the economic sphere could no longer claim neutrality. And “the more society became transparent as a mere nexus of coercive constraints, the more urgent became the need for a strong state” (STPS, 144). Where the traditional functions of the state centered on maintaining order, the new functions had formative goals (STPS, 147) that began to shake up the separation between state and society.

Two tendencies dialectically related to each other indicated a breakdown of the public sphere. While it penetrated more *spheres* of society, it simultaneously lost its political *function*, namely: that of subjecting the affairs that it had made public to the control of a critical public (STPS, 140).

And “the *principle* of the public sphere, that is, critical publicity, seemed to lose its strength in the measure that it expanded as a *sphere* and even undermined the private realm” (STPS, 140).

In this way, the “classical separation and complementary interlocking of these two powers” (legislation and administration) is subverted, and the “distinction between general law and specific regulatory measure has become blurred” (STPS, 179). Habermas sees this process happening from both sides: laws become more specific and reduce the discretion of agencies, and agencies take on functions that reflect greatly increased discretion and “can hardly any longer be considered a mere execution of the law” (STPS,

179).

In this early work, Habermas still thought that the appropriate response to the deterioration of the public sphere was to address the loss of access to a general interest, through turning to extra-state forums, like associations, for discussing the general interest (STPS, 248),<sup>12</sup> but in a later reconsideration of his work on the public sphere he suggests the importance of systems theory to understanding the problem. Habermas admits that Structural Transformation of the Public Sphere was still “captive” to the idea that “the society that administers itself, that by means of a legal enactment of plans writes the program controlling all spheres of life, including its economic reproduction, was to be integrated through the political will of the sovereign people” (HPS, 443). He says this is problematic given the complexity of modern society. The breakdown of the boundary between state and society, and the assumption by the state of new functions, introduces a new set of problems. To see them requires abandoning the view of society as a totality,<sup>13</sup> appreciating the way in which the various sectors of modern society can play a role in emancipatory projects, though each can cause serious crisis if they overstep their bounds.

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<sup>12</sup> In Structural Transformation of the Public Sphere, Habermas still thought Kant’s horizon of “perpetual peace” could point to a specific general interest (STPS, 235), for the idea of a *generalizable* interest, based on communicative interaction, came later. He explained in remarks about the work that he was motivated in part by a realization that “After the universalization of equal civil rights, the private autonomy of the masses could no longer have its social basis in the control over private property” (Habermas 1992b, 434, [future references to this title are abbreviated HPS]). In other words, some other basis would have to be found for the autonomy of a private sphere that is not shielded from interventions on behalf of distributive justice. Habermas admitted having been stumped as to the prospects for the emergence of such an interest (HPS, 441). But, in this early work, he could still claim that, despite this, “the antinomies of decision and discussion, of bureaucracy and democratic control, although aggravated... are not insoluble” (STPS, Note 128, 295).

<sup>13</sup> Habermas admits that this view of society and administration left him (and some members of the Frankfurt School) rather stranded in his effort to provide an account of the emancipatory potential of the enlightenment project of modernity (Habermas 1992a, 82, [future references to this title are abbreviated AS]).

Habermas suggests that the different sectors of society - economy, administration, and lifeworld - exist in a delicate balance, and that crisis from encroachment of one upon the other is an everpresent possibility. He explains that “The goal is no longer to supersede an economic system having a capitalist life of its own and a system of domination having a bureaucratic life of its own but to erect a democratic dam against the colonializing *encroachment* of system imperatives on areas of the lifeworld” (HPS, 444).

In Legitimation Crisis, Habermas suggests that a better response might be to harness, in some way, the potential of communicative reason to deliver a critical perspective. Habermas claims that, of the three subsystems of society, administration is particularly susceptible to misunderstanding its limits because it plays a special role in legitimation that the market does not. Habermas’s account of the importance of systems theory for figuring out how to reign in administrative power includes, first, a critique of expertocratic versions of systems theory, and, second, a discussion of the elements of “communicative ethics,” including the “generalizable interest” and the “ideal speech situation.”

First, for Habermas, the work of Niklas Luhmann provides an example of such an expertocratic administration.” These approaches to government claim for themselves the ability to identify and implement the general interest, without regard for the appropriate role of communicative reason. Luhmann serves as a stand-in for similar problems in the bureaucracies of capitalist and socialist states alike.<sup>14</sup> “Such monopolistic claims of an

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<sup>14</sup> Peter Dews, for example, points out that for Habermas advanced capitalism and bureaucratic socialism suffer from “parallel difficulties” (Dews in AS, 34). However, the particular problems of reliance on administration shows why Habermas supports capitalism in the end (AS, 37). When the market settles some

eccentric administration permit no possibility of appeal; this is, they may not be measured against standards of practical rationality, as was the case even in the *Leviathan*" (Habermas 1975, 142).<sup>15</sup>

Habermas argues that one problem with "eccentric" administration is that it claims that it must conceal contradictions that are generated by complexity, most recently the dilemmas associated with globalization. As the market has increasingly become the medium through which social integration occurs, and as individuals have defined themselves increasingly through their place in economic exchange, the risks associated with economic disruption have increased. And, with this, the role of administration in ensuring a good environment for markets has become more crucial.<sup>16</sup> To this end, administration takes upon itself the task of preventing the exposition of contradictions, like that of global inequities, by bypassing individuals. Habermas characterizes a "fundamental contradiction" as a situation in which a society's organizing principles arrange individuals and groups such that they have incompatible long run interests. To the extent this remains concealed, communication is distorted. "As soon as incompatibility becomes conscious, conflict becomes manifest, and irreconcilable interests are recognized as antagonistic interests" (LC, 27).

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integration problems, the lifeworld is not completely separate from communicative power.

<sup>15</sup> Future references to this title are abbreviated LC.

<sup>16</sup> As the last section recounted, Habermas, with others, has insisted that the road to free markets was paved with government involvement.

This points to his difference with Luhmann on participation.<sup>17</sup> Where Luhmann thinks that participation simply interferes with the administrative supply of motivations, for Habermas, participation in the formation of a generalizable interest through communicative reason is the only reliable source of connection and motives to obey laws that are contrary to one's interest. Luhmann thinks that starting from the issue of the desirability of participation amounts only to a "principle of frustration" (Luhmann cited in LC, 133) and that seeking to make the administrative system more reflexive through such participation is "meaningless" because the administrative system does not learn what should be done in this manner. Rather, discovering the appropriate policy choice is akin to a process of testing and eliminating possibilities, one that is unsuitable for the "intensive, engaged participation of all" which would render the process irrational (Luhmann cited in LC, 133). Luhmann's "fundamental experience," writes Habermas, is that "Almost everything could be possible, and I can change almost nothing" (LC, 131), and in this sense the individual within the system is both powerless and uninteresting. This emerges from a view that the administrative system, having rendered environmental complexity determinate, acquires a particular role that cannot be understood in terms of carrying out the directives arising "through discursive will-formation and participation," because motivations and will are generated by administration (LC, 132). But, Habermas warns,

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<sup>17</sup> Habermas carefully considers Luhmann's approach here and in other works partly because Luhmann formulates the institutional implications of "postmodern" ways of thinking. While many of Habermas's writings in defense of the modernist project are not formulated in explicitly institutional terms, where he does take up questions about the outlines of democratic government, he often refers to Luhmann. On one hand, Luhmann's work stands in for the myriad versions of positivist planning theory against which liberal theorists like Hayek also rail from a Humean standpoint. On the other hand, Luhmann's work serves to illustrate a stronger normative claim.



“the cultural system is peculiarly resistant to administrative control. *There is no administrative production of meaning*” (LC, 70). For this reason, attempts to “compensate for legitimation deficits through conscious manipulation” are limited (LC, 71).

Habermas raises empirical and methodological criticisms to Luhmann’s approach but these give way to a more important a normative objection:

should we rationally *desire* that social identity be formed through the minds of socially related individuals or should it be sacrificed to the problem - real or imagined - of complexity? To pose the question *in this way* is, of course, to answer it (LC, 142).

As he puts it in a later collection of essays, “market and administration cannot satisfy a whole series of collective needs” (AS, 73). Habermas rejects the notion that governments can generate meaningful support for law simply by their effectiveness in solving problems in the face of societal complexity and interest diversity. In the end, Habermas recommends a “struggle against the stabilization of a nature-like social system *over* the heads of its citizens” (LC, 143).

Habermas thinks such a struggle is better carried out through an approach based on “communicative ethics,” and a discussion of this approach forms the second part of Habermas’s account, in Legitimation Crisis, of the importance of systems theory for figuring out how to reign in administrative power. Habermas thinks that the appropriate way to decide upon the norms that should govern societal interaction and control the administrative subsystem is through determining which norms can be agreed upon by participants involved in a free and equal public exchange, an approach Habermas calls

“communicative ethics.” “Only *communicative ethics* guarantees the generality of admissible norms and the autonomy of acting subjects solely through the discursive redeemability of the validity claims with which norms appear” (LC, 89). This approach can not be equated with interest group contests in which each side can equally present its case for its own interests to an administration that will neutrally implement the winning side’s wishes, but instead suggests an orientation toward finding those aspects of one’s position with which others would agree. As Habermas puts it, “This transformation produces the distinction, rich in consequences, between the subjectivity of opinion, wanting, pleasure, and pain, on the one hand, and the utterances and norms that appear with a *claim to generality* on the other” (LC, 10).

Habermas insists that a “...social theory critical of ideology ... [must start from a] model of the suppression of generalizable interests...” From this perspective, generalizable interests are “needs *that can be communicatively shared*” (LC, 108). As he uses the term, “generalizable interest” both indicate a powerful resistance to traditional norms and reflect a grounding in present conflicts and demands. On one hand, Habermas says he employs the term “for needs that are... rendered subjective and detached, as it were, from the crystallizations of commonly shared values supported by tradition (and made binding in norms of action).” On the other hand, such interests must also “coincide sufficiently with interests that would have to find expression among those involved if they *were* to enter into practical discourse” (LC, 114). In other words, generalizable interests carry an inspirational potential but they must also be recognizable to participants.

Habermas thinks Luhmann is correct in his assertion that implementing a “general

interest” - a resolution or overcoming of partial interests in a settlement that is society-wide - can only generate unstable compromise. But Habermas claims that

The limits of a decisionistic treatment of practical questions are overcome as soon as argumentation is expected to test the *generalizability* of interests, instead of being resigned to an impenetrable pluralism of apparently ultimate value orientations... It is not the fact of this pluralism that is here disputed, but the assertion that it is impossible to separate by argumentation generalizable interests from those that are and remain particular (LC, 108).

Where the general interest of a totalized society is the guide to public action, only technical, administrative efforts are necessary. But when the ends of government policy are formulated in terms of a generalizable interest, administration is once again interlocked with politics.

An important aspect of communicative ethics is that it requires justification rather than technical argumentation. In contrast to Weber’s empirical study of types of authority according to their relation to legitimacy, Habermas says that he asks in Legitimation Crisis about the “*relation of legitimation to truth*” (LC, 97). He also distinguishes his question from empirical ones about the correspondence of moral norms to individual maturation (eg Kohlberg’s stages of consciousness, although Habermas is greatly influenced by such arguments) (LC, 95). And in contrast to Luhmann’s decisionism, Habermas says that he derives “the belief in legality from a belief in legitimacy that can be justified” (LC, 100). Such a relation of legitimation to truth moves beyond the legality of authority, in which only the effectivity of beliefs in legitimacy counts, and away from the rationality of authority, in which authority is believed to be rationally grounded if it delivers certain goods. Instead, a political relation to truth implies justification, either in reference to

traditional norms or to intersubjective and community standards. Because practical questions can be based on truth, "...justifiable norms can be distinguished from norms that merely stabilize relations of force" (LC, 111).

Habermas argues that this insistence on justifying public acts rather than simply making them legitimate within current social structures requires an orientation toward what he calls the "ideal speech situation," the recognition that expert speech and other forms of power can inhibit the free exchange of ideas. On one hand, this requires attention to the conditions under which public exchanges occur and to the ways in which attention to imbalances in power can lead to less distorted speech. Sunstein (1996) explains that

In the ideal speech situation, all participants have equal power, attempt to reach understanding, do not act manipulatively or strategically, and understand their obligation to offer reasons. In this situation, outcomes depend on what he calls "the unforced force of the better argument" (Sunstein 1996, 29).

On the other hand, it turns out that this procedure involves the "counterfactual imagining" of these "hidden interest positions" (LC, 115) by advocates because the "ideal speech situation" can never be achieved. This requires an admission that "a discourse carried through as advocacy can lead only to a hypothetical result" (LC, 117).

Habermas thinks that such an approach recognizes the two sides that must be grasped if a critical perspective is to be achieved.

If we comprehend a social system as a life-world, then the steering aspect is screened out. If we understand a society as a system, then the fact that social reality consists in the facticity of recognized, often counterfactual, validity claims is not taken into consideration (LC, 5).

If the administrative subsystem is seen only as an outcome of aggregative democratic decisions, it can not properly be criticized.

Through attention to the ethical stance implicit in an orientation toward communication, Habermas argues that self interest can be sorted from generalizable interests. Self-interest acts as “social power” that must be overcome if it improperly utilizes the political realm for its own ends by either instituting legislation around one’s particular interest, or subverting legislation around a generalizable interest that negatively affects one’s own self-interest. To the extent norms regulate particular rather than generalizable interests they are “based on force” (LC, 111), and to the extent generalizable interests are not regulated by norms, a “pseudo-compromise” or “*ideological form of justification*” exists (LC, 112). However, compromises are indirectly justifiable if a balance of power is in place between the parties (either in terms of separate powers or bourgeois civil law); and if the interests (1) are not generalizable, and (2) have undergone a process of will-formation that identified them as not-generalizable. But even balanced power must be accompanied by a discursive procedure to verify autonomy. “Even if a ‘class-compromise’ came about in advanced capitalism under conditions of a balance of power, the justifiability of the compromise would remain questionable as long as it excluded the possibility of discursively testing whether it was in fact a matter, on both sides, of particular interests that did not permit of a rational will and were thus accessible only to compromise” (LC, 112).

Habermas’s assertion that, to be legitimate, administration must reflect democratic participation in the identification of a generalizable interest has led some to take Habermas’s work as a starting point for developing a theory of “participatory administration.” For example, critical administrative studies, according to Schnieder and

Ingram argue that “unlike public choice and pluralist theories whose goal is to produce new knowledge, and unlike policy sciences whose goal is to improve public policy, the goal of critical theory is to produce social change that will empower, enlighten, and emancipate all people”(Schnieder and Ingram 1997, 51). They discuss three central concerns often found in critical theory: communicative rationality and the ideal speech situation, deliberative or participatory democracy, and postpositivist methodologies for planning, policy analysis, and social science research.

Other authors, writing from the point of view of practitioners, have turned to Habermas’s understanding of communicative ethics as a way to reformulate administrative rationality in less scientific terms. For example, John Forester has focused on the implications of Habermas’s “ideal speech act” for the practice of public officials designing policy, and for the goal of leveling the playing field that is often distorted through expert speech. Lorne Sossin argues that critical theory’s contribution to the field of public administration is to reveal the partial interests and the relations of power and dependence lying behind policy prescriptions, and to “provide a framework for analyzing and evaluating” the judgements that administrators make that moves beyond instrumental reasoning (Sossin 1993, 369). The increasing importance of public comments during agency rulemaking also reflects this trend.

But in this early work, Habermas fails to address institutional questions about how democratic legitimacy and effective law might be brought together. Stephen White, for instance, has pointed out that Habermas, like many of his contemporaries in the 1970's, offered no account of the institutional arrangements that might counter the tendency

toward the eccentric administration he warned against (White 1991, 10). John Dryzek criticized Habermas for having only a theory of deliberation and not one of democracy because of his unwillingness to talk about government decision making short of the ideal speech act (Dryzek 2000).<sup>18</sup> And Jane Mansbridge has argued that efforts to improve deliberative policy choices are of limited significance in the absence of a theory in Habermas's work that would legitimize administrative coercion (Mansbridge 1996).

## **SECTION 2: RECONSTRUCTED ADMINISTRATION AND GOVERNMENT BY LAW**

In Between Facts and Norms, Habermas proposes "government by law" that is intended to address the deficiencies of his critiques of both liberal and welfare state versions of administrative power. Where his earlier work provided only a negative outline of the potential problems associated with a coopted public sphere or a non-participatory administrative government apparatus, the more detailed picture of the democratic process he provides in Between Facts and Norms describes a positive role for administrative power. In this work, Habermas takes the familiar institutions of the administrative state - including separate power and representative mechanisms - as a starting point but offers significant revisions with important implications for political actors and administrators.

Habermas claims a special relevance for his work that is different from moral philosophy. He engages in what he calls "reconstructive" theorizing, in which he seeks to

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<sup>18</sup> However, with Habermas's later work, Dryzek sees a shift to liberalism that unfortunately denies what used to distinguish his work as "critical theory," namely the rejection of "extra-constitutional agents of both democratic influence and democratic distortion" (Dryzek 2000, 26).

understand and reconstruct already existing “fragments” of reason that are embedded in modern institutions.<sup>19</sup>

I do believe that there is only one way to push back the boundaries... between lifeworld and systems without those forces that are the most probable historically - that means without weapons, without bribery and money, without legal repression, and so on. The only way is to radicalize those institutions that we have already established in Western countries, to direct them toward a form of radical democracy that makes it possible, just in terms of delegitimization, to change or at least to affect administration. Administration is still the entry to economies... (HPS, 470).

On one hand, this approach reflects his belief in the inevitable role of the expert in a deliberative democracy. Habermas argues that “...moral discourses of justification are, as a rule, carried out in an advocatory fashion” (BFN, 183). For instance, as he discussed as early as Legitimation Crisis, where a generalizable interest is not visible, advocates engage in “counterfactually projected reconstructions” that can identify hidden irreconcilable conflicts and suggest paths to an interest that is generalizable (LC, 113). At some points, Habermas refers to philosophers as tutors in their efforts to shape moral discourses around such generalizable positions.<sup>20</sup> On the other hand, he argues that emancipatory efforts must take present reality as their starting point. Throughout the reconstruction, Habermas

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<sup>19</sup> Between Facts and Norms presents two separate “reconstructions” that show how constitutional democracy, including its administrative institutions, can be justified and described, and administration looks slightly different in each of the reconstructions. In the first, administration by government serves as a “macrosocial” integrator (one of three along with solidarity and money). In the second, administration acts as an implementer of communicative power (through the medium of law). The second can be seen as an answer to how the first happens, but the two together also form a particular understanding of the relationship between structure and action, between rationalizing discourse and social integration, and between autonomy and generalizable interest.

<sup>20</sup> Habermas refers to the educational purpose of the philosopher in several places, but most clearly in Autonomy & Solidarity (AS, 202). Patchen Markell points out that he has moderated this claim so that he “now practices a kind of philosophical modesty” (Markell 2000, 45). For instance, he writes that the discourse principle requires a “change in perspective” so the fact that legal conditions precede citizens requires that they have the right to “participate in processes that form the legislator’s opinion and will” (BFN, 127).



insists that “[t]he resistant reality with which critical reason wants to keep in touch is not just, and not even primarily, made up of the pluralism of conflicting life ideals and value orientations, of competing comprehensive doctrines, but of the harder material of institutions and action systems” (BFN, 64).

From this “reconstructive” perspective, Habermas asks how communicative power might be made effective in the context of the institutions and structural inequalities of a complex society. The centerpiece of his answer is a reliance upon law as the only medium that can reach across the various elements of society, and upon the state administration as the only body that can legitimately implement this law. In his account of “government by law... law [is] the medium through which communicative power is translated into administrative power” (BFN, 150).

This section will consider, first, the theoretical foundation of his approach in an analogy between legal and linguistic integration and the related insistence that law draw upon anonymous sources. This helps to ensure that gaps between what Habermas calls “facticity” and “validity” are overcome at the cognitive, motivational, and organizational levels. Second, the section will point to the familiarity of the model of the decision making process Habermas suggests and to the unfamiliarity of the abstract account of separate powers that underlies this model. Finally, the section will consider criticisms of Habermas’s approach that fail to separate the pieces of his system.

First, the theoretical foundation of government by law lies primarily in the legal, rather than moral or expert, center of “government by law.” This aspect sets Habermas’s approach apart from both the *rechtsstaat* and the welfare state discussed in Section 1.

Habermas argues that only law, and not moral rules or experts ability, can take the diverse - nonconsensual - stuff of communicative power and translate it into legitimately enforceable rules. Habermas's version of "government by law" differs from the traditionally liberal state, in which private autonomy guaranteed by law is sufficient and equal to autonomy, because it argues that private and public autonomy are both necessary at the core of the constitutional state. He says they are "co-original." Habermas argues that, without also delivering public autonomy, a state that guarantees only private autonomy cannot meet the need for a critical approach to public acts. The protection of private autonomy cannot be guaranteed on the plain of private rights only but must also invoke public policies and public autonomy. His approach also departs from expert, welfare state accounts of administration in its reliance upon communicative action to provide the guidance that public autonomy needs to guarantee legitimacy along with effectivity.

In claiming that law is the only suitable medium between communicative power and administrative power, Habermas draws upon an analogy between the way linguistic integration enables meaning in the absence of individual understanding and the way integration through law helps to ensure a desirable result while releasing the individual from the burden of always making the morally correct decision. On one hand, the most important aspect of social integration for Habermas is the way the lifeworld enables a reliance on communicative acts to integrate society. Habermas writes that, without the pregiven consensus provided by the lifeworld, "the risks of dissension, which are continually fueled by disappointing experiences and surprising contingencies are high," and

“such risks would make the use of language oriented to mutual understanding an unlikely route to social integration” (BFN, 22). But the consensus of the lifeworld is itself threatened by communicative reason because it becomes subject to the questioning that this orientation entails. However, Habermas argues that the only other option - the force of strategic action - must be resisted because, with Durkheim and Parsons, he does not believe that strategic action can sufficiently integrate society. And these risks are also justified because this view of society maintains “the classical conception of an internal connection, however mediated, between society and reason”(BFN, 8), and, for this reason, maintains a link between autonomous action and justified law. In this way, Habermas grounds his exclusive valuation of communicative reason on both an empirical claim about the prospects of successful integration on the basis of strategic action, and on a normative claim about the preferability of communicative action.

Thus, coupled with his conception of the lifeworld is a notion of communicative rationality, in which understanding emerges, not through an “exclusive relationship to moral issues,” as with practical reason, but through the structures of ordinary language and communication that weave society together (BFN, 3).

The communicative concept of the lifeworld<sup>21</sup> breaks with the idea of a whole composed of parts. The lifeworld is constituted from a network of communicative actions that branch out through social space and historical time, and these live off sources of cultural traditions and legitimate orders no less than they depend on the identities of socialized individuals (BFN, 80).

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<sup>21</sup> David Owen describes Habermas’s way of thinking along three lines: “critique orients communication to the ideal communication community (the transcendental idea); it articulates this orientation in communication in terms of enlightenment (the project of striving to reconcile the real and the ideal) in which the public use of communicative freedom subjects itself to the regulative constraints of performative consistency, that is, to the universal rules of rational argumentation (the lawful use of reason)” (Owen 1999, 29).

Communicative rationality does not provide prescriptions, but its embeddedness in the lifeworld provides a link between its norms and personal experiences. Habermas writes that “as we engage in communicative action, the lifeworld embraces us as an unmediated certainty, out of whose proximity we live and speak” (BFN, 22). This combination of communicative action and the lifeworld provides “solidarity,” the integration of society socially through “values, norms, and mutual understanding” (BFN, 39).

But, on the other hand, from the perspective of a theory of democracy (which implies the end of deliberation in a decision, and the transformation of that decision through implementation), communicative action is not sufficient to describe integration. Society is also integrated “systemically through markets and the administrative use of power” (BFN, 39). Administrative and economic subsystems are restrained, potentially, by communicative power, but also help to constitute that power. Habermas asks how a democracy might shore up communicative power against these subsystems, while also supporting their role in generating communicative power.

When one begins to focus on how subsystems play an integrative role, an important shift takes place in that ordinary language, so crucial to integration through solidarity, is replaced by law. In Habermas’s words, law is the only language with which “normatively substantive messages can circulate *throughout society*” (BFN, 56). But the transfer between the structures of the lifeworld, money, and administration runs both ways. He explains that “the legal code not only keeps one foot in the medium of ordinary language, through which everyday communication achieves social integration in the lifeworld; it also accepts messages that originate there and puts these into a form that is

comprehensible to the special codes of the power-steered administration and the money-steered economy” (BFN, 81). Because money and administrative power are both “anchored via legal institutionalization in orders of the lifeworld which is in turn integrated through communicative action,” modern law has ties with all three resources of integration. But, unlike solidarity, money and administrative power are also separate from the lifeworld (BFN, 40). On this point, Habermas agrees with Weber that these subsystems maintain their own functional imperatives, but he thinks Weber misses the importance of law to social integration, because he focused only on law’s functional contribution to political power (BFN, 73).

For law to fulfill this integrative role it must arise from anonymous linguistic structures or processes, rather than aggregations of present individuals or a transcendent subject. By anonymous, Habermas refers to subjectless forms of communication that move through all of the diverse paths present in the modern public sphere. This concept of the anonymous subject is important to Habermas’s system because it provides the only way of retaining the concept of popular sovereignty in a complex world in which one can not know to whom administrative sanctions will have to be applied because one does not know who would agree to the law in question.

Because popular sovereignty no longer concentrates in a collectivity, or in the physically tangible presence of the united citizens or their assembled representatives, but only takes effect in the circulation of reasonably structured deliberations and decisions, one can attribute a harmless meaning to the proposition that there cannot be a sovereign in the constitutional state. But this interpretation must be carefully defined so as not to divest popular sovereignty of its radical-democratic content (BFN, 136).

He claims that “Only in this anonymous form can its communicatively fluid power bind the

administrative power of the state apparatus to the will of the citizens” (BFN, 136).<sup>22</sup> The forms of communication that give rise to legitimate law must be as widely inclusive as possible, which means that such forums of opinion-formation, unlike the formal aspect of the lawmaking process, should be free of pressures to make decisions. “[The administrative system] is a subsystem specialized for collectively binding decisions, whereas the communicative structures of the public sphere constitute a far-flung network of sensors that react to the pressure of society-wide problems and stimulate influential opinions” (BFN, 300).

To achieve this broadest inclusivity, Habermas argues that it is crucial to think in terms of an anonymous position that emerges from dispersed networks oriented toward communication, rather than in terms of aggregating votes. Also, with this institutional focus, the place of the anonymous subject in Habermas’s role differs from Rawls’s invocation of a “veil of ignorance” in which certain types of positions must be filtered out. With Habermas’s “subjectless forms of communication” the focus is not on finding the appropriate philosophical stance that will find a common denominator as in Rawls, but on how one might achieve the “discursive structuring of public networks and arenas in which anonymous circuits of communication are detached from the concrete level of simple

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<sup>22</sup> Michelman has described a different kind of rationale for anonymous linguistic processes of agreement. The agreement that emerges in such dispersed public discussion amounts to one that participants cannot quite see because it rests in linguistic progress, and a faith in the advancement of the quality of debate. Participants view themselves as contributing to democratic debate rather than leveraging decisions in their favor (Michelman 1998, 22). Such “linguistic progress” might also reflect the kind of improvement that enables substantially better policy choices under Dryzek’s “discursive democracy” (Dryzek 2000). But for Habermas, the cognitive gains that come from increasing the quality of “democratic debate” is only part of the story because anonymity is precisely what legitimizes enforcement against those who were not involved in debate, for whom the quality of debate is a distant issue.

interactions” (BFN, 171).<sup>23</sup>

The institutions of the constitutional state are supposed to ... enable the communicative power of a rationally formed will to emerge and find binding expression in political and legal programs. [They] allow this communicative power to circulate throughout society via the reasonable application and administrative implementation of legal programs, so that it can foster social integration through the stabilization of expectations and the realization of collective goals (BFN, 176).

This means that the state must ensure the circulation of communicative freedom through the participation and social rights that are the basis of the constitutional state (BFN, 176), while also limiting participation that threatens to turn into bargaining in the administrative phase.

The integration that is achieved through converting the results of processes of anonymous opinion-formation into legitimate administrative programs and sanctions addresses a tension between what he calls “facticity” and “validity” that is housed within law itself. Habermas explains at the end of the postscript to Between Facts and Norms, that it is still an open question how his approach, not designed for Kant’s “race of devils,” comports with complex society. He writes that “it was just this skepticism that led me to focus on the tension between facticity and validity in the first place” (BFN, 462). In this sense, the central problematic of the book is the relationship between what the law demands and what normative theory calls for, and is a tension internal to law (BFN, 136).

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<sup>23</sup> Michelman asks “how much difference there really is between the two [Rawls and Habermas] when, inevitably, we regard them as regulative ideas for the critical appraisal and reform of contemporary manifestations of constitutional democracy” (Michelman 1996, 314)? Michelman concludes that Habermas departs from Rawls in focusing on the “possibility conditions for self-government by a people” (Michelman 1996, 315) meant in its present manifestations with all the empirical difficulties to agreement. He writes that Habermas’s distinctive contribution is in “focusing practical concern on the state of democratic political communication; in issuing a decided and emphatic call for a normatively guided rehabilitation of our apparently decrepit political public spheres; and especially in undertaking to show how the deepest assumptions of liberal constitutionalism require this focus...” (Michelman 1996, 315).

Habermas explores the “complex relationship between the law as a system of *effective sanctions* and the law as a system of valid norms...”(Markell 2000, 40). Habermas says that he intends, in part, to examine the problem of the “impotence of the ought” that has become prevalent in modern society (BFN, 57). Legal norms often step in to fill this gap, compelling people to act in certain ways but also representing the outcome of reasoned discourse. A principled, postconventional morality, cut loose from the moorings of a traditional ethical life, requires both “socialization processes that meet it halfway” (BFN, 113) and “an institutionalized legal system that *supplements* postconventional morality in a manner effective for action” (BFN, 114).

Law that emerges from anonymous sources and is implemented by administration “*relieves* the judging and acting person of the considerable cognitive, motivational, and - given the moral division of labor often required to fulfill positive duties - organizational demands of a morality centered on the individual’s conscience” (BFN, 453).

Administrative power provides sanctions that will function in place of the individual’s morality, thereby unburdening the individual. “The idea of self-legislation by citizens, then, should not be reduced to the *moral* self-legislation of *individual* persons” (BFN, 121). At each level, the legal core of public acts achieves integration not only through increasing agreement and understanding, but to the changed potential for agreement that is brought about by the new interest positions or responsibilities generated by administrative programs.

At the first level of the facticity/validity tension is the challenge of bridging the cognitive gap that emerges when those subject to law do not understand what the law



requires. Administrators make clear what is required to avoid sanctions. At this level of analysis, the implemented administrative policy is considered to represent, through the linguistic structures, that to which participants in discourse have agreed, without reference to agreement on motivations or reasons.

The second level of the facticity/validity tension lies in the gap between acceptance of law and its acceptability. Habermas says that this motivational gap or “*gap in solidarity*, which opens up insofar as legal subjects exclusively pursue their own private interests” (BFN, 33) is addressed by providing reasons to obey in both legitimacy and enforcement. “Once law is reflexively applied to the political power it tacitly presupposes ... the tension between facticity and validity shifts to another dimension: it reappears in constitutionally organized political power itself” (BFN, 136). In this sense, law provides an artificial facticity in that people obey, accompanied by legitimacy to the extent the norms enacted by law went through the democratic process. On one hand, “valid norms represent reasonable expectations only if they can actually be enforced against deviant behavior” (BFN, 116), but on the other hand, participants have to be able to agree to the policy, and be accorded Kant’s respect for each person as an end, for it to hold normative force. This level, then, refers to the requirement that the agreement manifested in administrative policy be founded on normative premises while providing sanctions that recognize the relative weakness of moral motivations.

The final level, the tension between law and “external” power, refers beyond the legitimacy of law to its tensions with “social facticity” that includes the possibilities for “social power” to subvert democracy because of structural social and economic

inequalities, and the organizational troubles and collective action dilemmas that arise when the implementation of a norm requires resources beyond those of the individual. problems that arise in one's own neighborhood as well as with regard to "poverty-stricken areas of the Third World" (BFN, 116). On this level, administrative power plays a crucial role in providing resources that are unavailable when law is only meant to mediate between individuals.

On the basis of this theoretical background, Habermas then sketches an account of the institutional law making process that looks very familiar and would probably please those, like Lowi, opposed to administrative involvement in decision making. The institutionalized process of government by law that precedes the legitimate implementation of coercive government programs moves ideally through several steps, including a proposal for the use of government power, a "metalevel decision" about what type of issue is at stake, the filtration of reasons in line with generalizable interests or shared values, fair bargaining where the latter is impossible, and the formation and implementation of administrative programs.

Habermas says that legislators must "first make metalevel decisions..." about whether and who should decide and what the consequences will be "for the further legitimate processing of their broad legal programs" (BFN, 439). They must decide "the level [moral, ethical, or practical] at which the controversy should be *continued* with arguments." (BFN, 439) This decision is important because this determines what kinds of arguments, and thus what kinds of participants, are permitted in light of the goal of an increasingly rational decision making process.

Habermas hints at how he would classify certain questions. For instance, he sees moral issues as including “questions of social policy, of tax law, or of the organization of educational and health-care systems, where the distribution of social wealth, life opportunities, and chances for survival in general are at stake.” Ethical issues include those that “push beyond contested interests and values and engage the participants in a process of self-understanding by which they become reflexively aware of deeper consonances in a common form of life,” such as “ecological questions concerning the protection of the environment and animals, questions of traffic control and city planning; or... questions of immigration policy, the protection of cultural and ethnic minorities, or any question touching upon political culture” (BFN, 165). Habermas explains that he refers to “aspects” of questions that are only analytically distinct (BFN, 565).

Once a determination is made as to what type of issue is at stake, either moral discourses, ethical-political discourses, or procedurally regulated bargaining begins on whether to use or not to use government coercion. Where moral discourses do not result in a determination that the interest at stake is generalizable or a shared value, the only way to proceed is through fair bargaining as long as this ensures a balance of power among those who are affected. Generalizable interests demand different procedures for inclusiveness than other kinds of interests. Where a generalizable interest requires that all parties be involved in decision making, other kinds of interests limit participation to interested parties who reach compromises. Habermas wants to distinguish between the tasks of government that arise from the integrative and implementing requirements of constitutional legal systems, and those for which parties agree to use the state without

claiming for them any status as generalizable. On one hand, Habermas insists that government address generalizable interests as generalizable, but on the other hand, he tries to find a way of accommodating the fact that the problems government tackles are not limited to such potentially shared interests.

But at the same time Habermas sets out this institutional process, he snaps it back with a move that, at first glance, favors those who support wider administrative delegations and participatory administration. His relatively familiar description of the lawmaking process is joined by an account of separate powers as abstract that is difficult to fit into the standard categories of political and administrative. Habermas suggests stepping back from an institutional account of separate powers to what motivates such a separation. Behind the modern institutions of separate power, Habermas finds an abstract account of different forms of argumentation, an appreciation of which allows a critique of the institutions meant to provide for fair, meaningful, and effective deliberation.

The talk of “legislature,” “judiciary,” and “administration” suggests an overly concrete understanding led astray by inherited forms of institutionalization. Such a view misses the level of abstraction at which we have sketched the discourse-theoretic specification of the *functions* of legislation, application, and implementation. Only when one approaches these functions at an abstract level, in terms of the disposition over different kinds of admissible arguments and corresponding forms of communication, can one assess the adequacy of the various ways in which the principles implied by the logic of separated powers have been institutionalized (BFN, 193).

He thinks this abstract account of administration is a better starting point than traditional accounts of separating power that begin by sketching the institutions of democratic government and ensuring their integrity.

The abstract account of separate powers recognizes that the appropriate place and

time for the different kinds of arguments - legislative, judicial, and implementing - may or may not coincide with institutional boundaries. In other words, in Habermas's abstract version of separate powers, the communicative model provides the basis for institutional separations, rather than the other way around. So dogmatic policing of institutional boundaries must not be permitted to interfere with the argumentative process. Abstract separate powers, unlike the classical version, does not require rigorously enforced institutional or spatial locations, for the separation may still hold even where groups outside the state, or other branches within the state, cross over to participate in legislative or administrative tasks. "From this argumentation-theoretic perspective, the division of powers and responsibilities among authorities that respectively make, apply, and implement laws follows from the *distribution of the possibilities for access to different sorts of reasons* and to the corresponding forms of communication that determine how these reasons are dealt with" (BFN, 192). Habermas rejects the "transmission belt" model of administration in which the state gains legitimacy simply through competently fulfilling its duties (BFN, 186).

The practical implications of this significant departure from traditional separate powers theory is that, rather than mandating a certain institutional form or characterizing a historical development, the abstract version of separate powers allows for a nominally administrative body to take on legislative tasks so long as the proper protections are in place. He writes that "...insofar as the implementation of programmatic goals requires the administration to perform organizational tasks that at least implicitly require a further development of law, the legitimation basis of traditional administrative structures no

longer suffices” (BFN, 193). It also permits participation in administration. “Thus one response to the expanded discretionary leeway of welfare-state bureaucracies, for example, was to build new forms of participation and arenas for deliberation into the decision-making process of the administration itself, so as to avert the danger of an improper self-programming” (BFN, 191).

But there is an essential condition to the use of administrative power which is that power must flow only in one direction, from communicative power to administrative power (BFN, 187). Thus, according to Habermas’s account, when the circumstances require it, administrators can legitimately engage in normative reasoning, but in such cases the political process is properly understood as beginning in the executive branch because a particular moral or ethical question was left out of consideration by legislators. Rather than continuing political contest into the implementing phase, administrators must remain faithful to political will where it has been identified and engage in normative reasoning where it has not. This is a crucial distinction because it both extends the authority of administrators and describes the boundaries of such authority in terms of an argumentative process that is itself political.

On one hand, this means that communicative power leads to the election of representatives who then select administrators. On the other hand, this condition relates to the legality of administration itself, through the professional carrying out of administrative tasks and through the insistence upon a statutory basis for administrative tasks. “The public opinion that is worked up via democratic procedures into communicative power cannot ‘rule’ of itself but can only point the use of administrative

power in specific directions” (BFN, 300).

This abstract version of separate powers also does not necessarily imply either decentralization or centralization of power. Decentralization is indirectly called for by the logic of separation only if it weakens independent administrative power (BFN, 188). Even at the local level, the logic of separation emerges as government officials engaged in tasks that cross over the borders between the legislative and administrative are elected by citizens who, because they are local, are in a much better position to judge their actions in terms of communicative power.<sup>24</sup> By the same token, however, this level of government “remains susceptible to the informally exerted pressure of socially powerful persons or groups” (BFN, 537). On one hand, local authorities may be better placed to know what is called for by communicative power, but on the other hand, they may be under the influence of social power. In this latter case, it is better to have centralized administrative institutions.

In addition, the abstract version of separate powers cannot be characterized by a relation of general principles to increasingly more specific and local ordinances. The account does not mean that the executive branch is charged with giving local content to general law. This, according to Habermas, implies a semantic definition of law that arises within the German “liberal” tradition, and in which the content of a general norm is manifested in successive levels of application. “On this reading, a law owes its legitimacy not to the democratic procedures but to its grammatical form” (BFN, 189). Habermas

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<sup>24</sup> Habermas refers specifically to the German system in this footnote, but his point carries favorably into the American context.

agrees with critics like Lowi who point to the anti-democratic results of the increasing difficulty of legislators to find general statements of law that can hold up against the tidalwave of particulars spelled out by administrators. But Habermas thinks the appropriate response is to let go of the misleading theory of the transmission belt.

Thus, his account of the relationship between politics and administration departs from the “transmission belt” or traditional separate powers model, but cannot be equated with those who call for increased delegation of power to administrators.<sup>25</sup> Administrators have increased authority because of the significant role they play in integrating society, above their roles as implementers of representative will. But Habermas also provides an account of the theoretical limits to their power through their temporal place in the argumentative process.

Many have recognized that “government by law” modifies the “consensus” theory of politics for which he has been long and widely criticized, but there is disagreement over what such a change amounts to. Some criticize the enhanced role of government as the site of mediation between diverse elements of society. Others criticize the controversial role of the “anonymous” form that communicative power must assume to be legitimate and claim that he betrays the hopes of practitioners inspired by his notion of “ideal speech.” For example, Andrew Arato and James Bohman both criticize Habermas’s claims that “law is the medium through which communicative power is translated into administrative power,” and that “only the administrative system can *act*.” Though these

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<sup>25</sup> This issue of how Habermas’s approach stacks up in debates over the delegation of power to administrators will be discussed in further detail in Chapter 5.



authors share Habermas's hope that popular sovereignty can be justified through their versions of the relationship between politics and administration, they each object to elements of Habermas's system. Arato argues that legitimate administration, understood as "self-regulation," can happen outside the confines of lawmaking in the administrative state. Bohman argues that communicative power works directly on state administration rather than being translated.

Andrew Arato objects to Habermas's insistence that all public acts must be funneled through formal law and the state administration. On one hand, Arato agrees with the limits Habermas places on administrative activity by designating it as the end point in a political process in which power moves only in one direction, from moral and ethical reasons to administrative ones. "[I]nstead of seeking to inhibit the administration through formal and general laws, which is no longer possible, instead of proposing that the legislature mandate the specific contents of interventions [Lowi] which cannot be done, Habermas is here defending a model of bringing the procedures of administrative activity under the control of public procedures on the output side, where those concerned are able to discern and call to attention the unwanted side effects of intervention" (Arato 1998, 31). And Arato thinks that Habermas's invocation of anonymous linguistic processes is a practical interpretation of the way decisions are actually made in a complex society. For Arato, Habermas's conceptions of the civil public sphere "helps avoid such politically irrelevant illusions as the conversion of state policy making into a fully deliberative process, or the radical democratization of all spheres of life" (Arato 1998, 32).

But, on the other hand, Arato suggests that Habermas's approach is overly

restrictive in its equation of legitimate law with the formal decision making processes of the state. In his insistence that all law must serve the goals of social integration, Arato argues, Habermas drops a distinction that was present in his earlier work between two roles of law - institution (socially integrative norms) and medium (political). Arato wonders whether this triumph of the notion of law as integrator dampens the possibility of associations, working independently of the state administration, regulating themselves outside the sphere of state power. Instead, Arato suggests that “we must investigate the possibility of a constitutionalism that would serve the material goals of the welfare state by establishing the limits of bureaucratic intervention and creating incentives for self-regulation” (Arato 1998, 36).

In their argument for a greater reliance upon civil society, Cohen and Arato think Habermas’s focus on a new mode of coordinating action through the state relies too much on the state and has too little faith in participation. Where Habermas thinks that two paths leading to a fusion of state and society - “‘statization of society’ (state interventionism) [flowing from the Marxian utopia of state-society] and ‘the socialization of the state’ (neocorporatism) [flowing from the ‘Tocquevillian project of reestablishing the intermediary associations of civil and political society in a democratic form’]” - are effectively the same, Cohen and Arato insist on their essential difference. Where the first generates only social rights that can exist even in an authoritarian state, the second gives new life to the public sphere itself (Cohen and Arato 1992, 253). So by obscuring the difference between them, Habermas denies the potential of the civil society model. Cohen and Arato argue that he overstates the logical contradiction of the liberal public sphere.

They write that he “follows the internal logic of the liberal conception of the public sphere to such a point that the only form of effective social control of the state that seems to be logically possible is its abolition” (Cohen and Arato 1992, 222), and its “...replacement by a closed system of legal norms” (Cohen and Arato 1992, 223). They argue that Habermas, misguided by this exaggerated version of an equation of private interests and moral norms, improperly calls for a system of law that risks resulting in the submission of civil society to state power. The result, according to Cohen and Arato, is that “Paradoxically, the analyst who has done the most to identify the normative ideal of the modern public sphere with the differentiation of state and civil society came to the conclusion that this ideal could be saved only by accepting what has already occurred: dedifferentiation and the abolition of an independent civil society” (Cohen and Arato 1992, 254). Instead, they think that a critical public is best achieved through encouraging the associational activity of civil society that can engage in alternative forms of regulation.

From a different direction, James Bohman agrees with Habermas that state administration is appropriately the site of legitimate public action, but he argues that communicative power works directly on state administration rather than being translated by formal lawmaking processes. Bohman complains that Habermas’s worry about social complexity leads him to displace “actual democratic sovereignty,” which consists precisely in the equation of democratic opinion with democratic will (Bohman 1994, 928), by placing will-formation in formal institutions and equating anonymous structures of opinion-formation with mere influence on those formal institutions, including

administration.<sup>26</sup> Bohman laments that Habermas's earlier worries about the "colonization of the lifeworld' by markets and state bureaucracy are generally absent [in Between Facts and Norms]"(Bohman 1994, 928). Bohman argues that communicative power does not get transformed at the moment of decision into administrative power, but continues to circulate when the task is passed to administrative agencies.

Bohman thinks the counter-democratic tendencies of the welfare state are better addressed by extending the deliberative model to the implementation of democratic decisions. Bohman insists upon the democratic implications of the interaction between citizens and institutions, and upon the crucial role of public spheres around particular agencies (Bohman 1996, 188), as a response to Habermas's invocation of the anonymous public sphere. Bohman calls his alternative model "reflexive administration" and explains that it holds that "processes of public input must be created so that deliberators within a framework of administrative institutions are compelled to take diverse perspectives into account as they constantly revise their basic framework for decision making" (Bohman 1996, 190). Unlike Habermas's insistence that popular sovereignty can only be delivered through anonymous processes of opinion-formation, Bohman argues that "The rule of the majority is what institutionalized popular sovereignty means, and its weaknesses need to

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<sup>26</sup> In addition, William Forbath argues that Habermas's approach unnecessarily separates the public sphere of citizens from involvement in the economic and administrative subsystems. Specifically, it is Habermas's distinction between "the lifeworld and the world of systems" that reminds Forbath of Arendt, of whom Forbath is highly critical (Forbath 1998, 276). Forbath thinks that the associations Habermas values in civil society must not only be autonomous, but also efficacious, and this often requires "some institutional role in the deliberation and bargaining that attend law and policy making, and/or in the ongoing interpretation and implementation of laws and policies." And this might entail "affirmative state intervention and support, often in the form of legal mandates" (Forbath 1998, 278), all of which amounts to a "tainting" of these groups in Habermas's scheme. Forbath's reading of Habermas, however, interprets his scheme too rigidly as institutional rather than abstract.

be corrected by rational counter-majoritarian institutions (such as judicial review), not by social complexity and the differentiation of administrative subsystems for decision making” (Bohman 1996, 186). In addition, Bohman asserts that citizens must see their decisions as revisable for cooperation to continue into the future (Bohman 1994, 923). With this move, “citizens will then be more likely to overcome their myopia and ethnocentrism and to think of their democratic practices in an inclusive and future-oriented way, knowing that their decisions may have to be revised to maintain publicity and equality” (Bohman 1994, 923).

So Arato wants to retain the social policies that are often established through law without the restriction that these policies be the exclusive preserve of government, while Bohman agrees that social policy should be funneled through the state but disagrees with Habermas’s insistence that such social policy should draw upon anonymous sources. But the pieces of Habermas’s system are not so easily pulled apart. The intertwined demands of legitimacy and effectivity, mentioned at the outset of this chapter, draw together the various parts of Habermas’s formula for government by law.

Both Arato and Habermas agree that legitimacy is a crucial category in the understanding of law and democracy. Arato thinks it is best achieved through a reflexive approach to law - in which participants adopt policies that affect only themselves. The laws or rules apply only within the boundaries of those who participated, or who chose to be a part of the association of affected individuals. But the important role of law as mediator, in Habermas’s work, arises because one cannot know who will be affected. For example, Cohen and Arato call for a mode of governance that will “accomplish the work

of social policy by more decentralized and autonomous civil-society-based programs than in traditional welfare states and the work of economic regulation by nonbureaucratic, less intrusive forms of legislation...” (Cohen and Arato 1992, 26). But regulating organizations, like homeowner’s associations, ostensibly adopting rules only for members, have effects that extend far beyond their sphere, often translating into an aversion to paying for city services or affecting school systems. Because Cohen and Arato share Habermas’s stress on deliberation, they must accommodate the demand that these organizations respond to democratic publics when their affects extend past the bounds of their membership. But how this would be accomplished without law and government administration is unclear.

Bohman, for his part, agrees with Habermas’s assessment that legitimacy is delivered through law and government administration, and he agrees that effectiveness (defined as faithful executive of political will) is crucial to that legitimacy. But Bohman thinks that what must be made effective is the rule of the majority and he criticizes Habermas’s displacement of this connection through reliance upon “subjectless” forms of communication. Bohman argues that citizens should be considered “not as passive clients but as sources of information and judgements, especially concerning the contextual features of applying laws and agreements to specific local situations” (Bohman 1996, 189). But Habermas’s invocation of anonymous sources arises from a claim that Bohman also accepts, which is that administrators cannot reconsider the content of law. They are limited, in their ideal function, to applying rather than redrawing law, so that the lawmaking process can come to an end in implementation.

Thus, Habermas's work provides a complex architecture designed to show how legitimate law and effective policy can coexist. It is anonymity that allows administrators to legitimately cross outside the bounds of those who actually participated, and it is crossing the boundaries of those who participated that enables effectiveness. In his view, explaining how social integration happens (through the smooth implementation of communicative power) and how social power is overcome (through reducing the effects of strategic action) pose the greatest challenges to social theory. Administration by government plays an ambivalent role by on one hand providing a mechanism for the deliberate production of social solidarity, and on the other hand by responding to demands that coercive political decisions be implemented. Administrative policy is directed by an anonymous process of opinion- and will-formation, but only retains that which responds to reasons and has survived the filtration process of a political mechanism directed to decisionmaking. Administration's task is to fill in the content of the will that emerges. So, within the Constitutional state, Habermas claims he has identified a mechanism for linking implementation and integration without sacrificing either democracy or effectiveness in problem solving.

### **SECTION 3: THE RISK SOCIETY AND INTERNATIONAL DOMESTIC POLICY**

On the international level, the pressure to separate legitimate law and effectivity becomes even greater as the prospect for identifying a political will through appropriate procedures grows more dim. This section will address Habermas's increasing calls for an

extension of his framework of legitimate law outside the bounds of the nation-state - he calls such an approach “the idea of an international domestic policy without a world government” (Habermas 1998a, 6) - and point to the ways in which his formulation of administrative power facilitates this shift onto the international level. He worries about the binding force of administrative power beyond the nation state (Habermas 1998b, 127).<sup>27</sup> But unlike some critics who think Habermas proposes a significant difference between domestic and international administrative power, this section argues that, for Habermas, domestic administration implies or at least serves as a model for international administration.

The section will first discuss why he thinks “first world” countries are uniquely situated to address the problems of the world. Second, the section will turn to Habermas’s modification of Kant’s cosmopolitan law as a way of addressing issues of sovereignty raised by the activist role he promotes. Central to Habermas’s reformulation is the notion that cosmopolitan law must function in a similar way as constitutional law, in which communicative power is translated through law into administrative power. Finally, the section will take up Habermas’s confrontation with decisionism, and consider his suggestion that administrative power can legitimately utilize sanctions across borders.

Habermas, like many others, strives to find some mode of ensuring the legitimacy of internationally conceived and directed social policy, especially given the apparent

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<sup>27</sup> Future references to this title are abbreviated IO.



inevitability of such policy with increasing globalization.<sup>28</sup> Habermas adopts Giddens' definition of globalization: "globally dispersed media, networks, and systems in general necessitate increasingly dense symbolic and social interrelations, which lead to the constant reciprocal influence of local and far distant events" (IO, 174). In a sense, Habermas, like Arendt, thinks global policy is driven by humanity's non-political achievements and this non-noble birth already argues against moral claims.<sup>29</sup>

For Habermas, such cross-border policy can only be justified by generalizable interests that are not wholly domestic, nor able to be addressed within state borders. Habermas explains the need to bring administrative power to bear on global problems in "The European Nation-State: On the Past and Future of Sovereignty and Citizenship." Globalization (IO, 120) and the denationalization of economic production (IO, 122) has posed new challenges to welfare states. He finds that a domestic liberal political culture must move onto the international level and engage or direct globalization if it is to ensure legitimacy. In a risk society, this means implementing programs across borders and a shift in how participants in the global arena think about international problems. "...[T]his change in perspective from 'international relations' to a world domestic policy cannot be

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<sup>28</sup> Jon Pierre, for instance, says that deregulation of capital in the 1980's led to a "massive restructuring of both domestic economies and the international system" such that domestic authority and power in problem solving has been undermined (Pierre 2000, 5).

<sup>29</sup> See Arendt's discussion of Jaspers. "Every country has become the almost immediate neighbor of every other country, and every man feels the shock of events which take place at the other side of the globe. But this common factual present is not based on a common past and does not in the least guarantee a common future. Technology, having provided the unity of the world, can just as easily destroy it and the means of global communication were designed side by side with the means of possible global destruction. ... This negative solidarity, based on the fear of global destruction, has its correspondence in a less articulate, but no less potent, apprehension that the solidarity of mankind can be meaningful in a positive sense only if it is coupled with political responsibility" (MDT, 83).

expected from ruling elites until the population itself, on the basis of its own understanding of its own best interests, rewards them for it” (Habermas 2001a, 56).<sup>30</sup> For example, Habermas thinks that the “pacifist consciousness” that followed the two world wars took hold only when an international public demanded it.

Thus, the first addressees for this “project” are not governments. They are social movements and non-governmental organizations; the active members of a civil society that stretches beyond national borders. The idea that the regulatory power of politics has to grow to catch up with globalized markets, in any event, refers to the complex relationships between the coordinative capacities of political regimes, on the one hand, and on the other a new mode of integration: cosmopolitan solidarity (PC, 57).

This shift, however, points to problems with identifying the appropriate content of international political will.

On the domestic level, Habermas argues, multicultural societies can be held together by a political culture, however much it has proven itself, only if democratic citizenship pays off not only in terms of liberal individual rights and rights of political participation, but also in the enjoyment of social and cultural rights.

The citizens must be able to experience *the fair value of their rights* also in the form of social security and the reciprocal recognition of different cultural forms of life. Democratic citizenship can only realize its integrative potential - that is, it can only found solidarity between strangers - if it proves itself as a mechanism that actually realizes the material conditions of preferred forms of life (IO, 118-119).

Habermas also makes the argument from the other side by reproducing the claim that physical deterioration leads to “moral erosion of the society” (IO, 123). This requirement, however, is preceded by the understanding that “...constitutional democracy depends on the motivations of a population *accustomed* to liberty, motivations that cannot be

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<sup>30</sup> Future references to this title are abbreviated PC.

generated by administrative measures” (BFN, 461).

Similarly on the international level, human rights drive the demand for cross-border policy. In Between Facts and Norms, Habermas writes that “As Kant realized, basic rights require, by virtue of their semantic content, an international, legally administered ‘cosmopolitan society’” (BFN, 456). Habermas envisions not a world government but an extension of domestic policy to address cross-border concerns. “An alternative to the abdication of politics would be if politics were to follow the lead of the markets by constructing supranational political agencies” (IO, 123). He observes that the UN global summit on social problems in Copenhagen and the Earth Summit in Rio both pointed to the need for such organizations “that are capable of taking initiatives.” But he worries about the “troubling question of whether democratic opinion- and will-formation could ever achieve a binding force that extends beyond the level of the nation-state” (IO, 127).

Habermas claims that the “first world” countries are uniquely situated to address the problems of the world. This is because their domestic public spheres enable them to act communicatively rather than strategically. Habermas clearly refers to the anonymous public sphere in his assertion that “publics” and states, rather than individuals, act on the international level. “Only the states of the *First World* can afford to harmonize their national interests to a certain extent with the norms that define the halfhearted cosmopolitan aspirations of the UN” (IO, 184). Because *Third World* states enjoy little or no internal stability, and *Second World* states maintain internal stability only through authoritarian insistence on internal and external sovereignty, he concludes that first-world states, from their privileged positions, should apply “gentle pressure” toward the

democratization of other states.<sup>31</sup>

But these responsibilities are also problematic for “first world” states. They are often also dissuaded by the costliness of implementing the new understanding of peace. He hopes that the global civil society and the “gentle pressure toward globally coordinated action exerted by the awareness of global dangers” will move the process forward (IO, 186). “The globalization of these dangers has in fact long since united the world into an involuntary community of shared risks” (IO, 186). In this way, Habermas shifts the focus from the moral status of the first world and defines the possible interventions in terms of self-interest and problem-solving. This approach also avoids the problematic results, pointed to by Arendt, of expecting individual states to take responsibility for the world. In considering what understanding of administration is needed for global “problems” rather than global “expansion” he finds the public sphere has to expand onto at least the regional level, and that an ideal public must empower an international group of national policymakers.

The model for Habermas’s reconfiguration of international cooperation is Kant, and to this extent he must respond to problems generated by Kant’s theory of the state system. Habermas argues that his discourse theory of law and democracy allows him to

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<sup>31</sup> Habermas’s claims of first world neutrality are not without challenge in the literature on democratization and globalization. An example is Harbeson who considers various issues around “democratic peace” theory and the prospects for democracy in sub-Saharan Africa. He points to the links between international theory and empirical democratic theory that emerge in calls for the promotion of democracy by such theorists as Allison and Beschel. On one hand, he thinks such broad shopping lists for democratic reform pay insufficient attention to conflict resolution mechanisms in general, and to sub-Saharan African particularities. But on the other hand, he expresses surprise that the authors “tacitly contend that engagement by one democracy with democratization in another country is by definition a collaborative and cooperative enterprise rather than an exercise of hegemonic stability” (Harbeson 2000, 125).

overcome the theoretical difficulties he finds in Kant's formula for a cosmopolitan system of nations. In "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove," Habermas argues that it is necessary to correct Kant's understanding of cosmopolitan peace, and shows how such a corrected conception stands up to the criticism that it would grant unlimited power to a morality police. "Cosmopolitan law is a logical consequence of the idea of the constitutive rule of law" (IO, 199).

Kant saw such a society in a federation of nations in which cosmopolitan law accompanies state and international law (IO, 165). But, Habermas claims, his attempts to show what is distinctive about cosmopolitan law are insufficient. Because Kant insists on the maintenance of sovereignty understood as the prerogative of individual states to leave the federation, and thus does not incorporate any *legal* institution that would have authority to coerce members, "he must rely exclusively on each government's own *moral* self-obligation" (IO, 169). However, this contradicts Kant's assertion that a "good political constitution" does not require morally upstanding members (IO, 170).

Central to Habermas's reformulation is the notion that cosmopolitan law must function in a similar way as constitutional law, in which communicative power is translated through law into administrative power. Habermas reconfigures Kant's understanding of sovereignty and cosmopolitan law to incorporate sanctions for non-compliant states rather than relying on their voluntary compliance. Because Kant relied on voluntary compliance, he invokes a certain faith that what Habermas calls "three basic quasi-natural tendencies that complement reason" and will make federation more likely because it is in the enlightened self-interest of states. But each of the three tendencies, in hindsight, is

problematic. Habermas thinks they are historically flawed but they offer insight into what changes might be needed in order to make it possible to implement the idea of a cosmopolitan federation of nations. First, Kant points out the historically peaceful character of republics, and Habermas agrees that, though nationalism has complicated the role of republics in translating citizen desires into peaceful policy, Kant's insight has proven basically true (IO, 172). But this does not provide guidance for interacting with non-democratic states.

Second, Kant cites the power of international trade to forge an association, and again Habermas asserts that the situation is more complicated than Kant thought. While the class conflicts addressed by welfare states have brought economies closer together, the transformation of state sovereignty by nongovernmental actors has further lead to a "denationalization of the economy" and a "blurring of the boundaries between domestic and foreign policy." What this reveals is that constraints on decisionmaking processes affect the possibilities for policy prior to questions about what policy should be chosen or how it should be effected. Referring to Joseph Nye's work on international policymaking, he urges that "Influence on the parameters within which other actors make their decisions is often more important than the direct implementation of one's own goals, the exercise of executive power, or the threat of violence" (IO, 175).

Finally, Kant hopes that the function of the political public sphere will help bring about federation (IO, 171). Habermas thinks the "*global* public sphere" emerging in recent years far surpasses the European elite conversational sphere Kant envisioned, though "to be sure one should not overlook the fact that this temporary, issue-specific public attention

is still channeled through the established structures of national public spheres” (IO, 177). But the extent of this sphere is not as crucial as the way the liberal political cultures supporting it manage to bring tradition and critique - the legal and the moral - into contact with one another so that a link is established “between the prudent pursuit of one’s interests, moral insight, and custom” (IO, 177). This intermixing of nations through a shared liberal political culture is the most crucial ingredient in a cosmopolitan system.

According to Habermas, what is missing from Kant’s account is a view of the relation between states such that administration functions as it does, or should, in the domestic sphere. Habermas thinks that the events of WWII facilitated the empirical shift from international to cosmopolitan law (IO, 178), because they created an institutional situation in which nations could focus on the same concerns as consociates under law. “The external character of international relations between states that form environments for each other is thereby transformed into a domestic relationship between the members of a common organization based on a legal code or a constitution” (IO, 179). Habermas urges three specific revisions to Kant’s framework. First, cosmopolitan law must, like constitutional law, mediate between communicative power and administrative power. The latter ensures that the normative basis of international agreement is manifested in a “nonnormative, purely purposively grounded reliability of expectations” (IO, 180). Second, Kant’s inconsistent claim of inviolable sovereignty for nation-states must be abandoned and replaced by a grounding of rights in each individual. “The point of cosmopolitan law is, rather, that it bypasses the collective subjects of international law and directly establishes the legal status of the individual subjects by granting them unmediated

membership in the association of free and equal world citizens” (IO, 181). Thirdly, the stratification of states requires a move beyond Kant’s understanding of peace as the absence of war, and toward a willingness to target the internal affairs of “formally sovereign states with the goal of promoting self-sustaining economies and tolerable social conditions, democratic participation, the rule of law, and cultural tolerance” (IO, 185).

In effect, Habermas argues that the problem with Kant’s cosmopolitanism was not in identifying a generalizable interest, but in linking it to administrative power. With Habermas’s changes in the way “government by law” forges this link, it was easy to slip constitutionalism into cosmopolitan clothes.

This shift onto the international level also requires a response to Carl Schmitt’s claim that political boundaries represent and maintain the everpresent possibility, which is the definition of politics, of using violence against the enemy. From this perspective, Habermas’s liberalism erases politics at its own peril and denies the difference between coercion within and across political boundaries. Administration in Habermas’s theory of democracy plays a crucial role in his response to three important claims made by Schmitt. First, against the notion that moralization results in criminalization of the other, Habermas stresses the “actionability of rights.” Second, Habermas argues that Schmitt’s fear of total war depends on an assumption of external sovereignty that denies the interdependence of states, both normatively and empirically. Finally, Habermas criticizes Schmitt’s claim that liberalism and democracy are mutually exclusive.

Frist, according to Habermas, Schmitt argues “that the politics of human rights leads to wars which under the guise of police actions take on a moral character; and that



this moralization brands opponents as enemies, and the resulting criminalization for the first time gives inhumanity a completely free hand..." (IO, 189). Habermas denies that "the politics of human rights implements norms that are part of a universalistic morality" (IO, 189). Rather, Habermas insists on the role of the application and implementation of such rights.

In my view, this appeal to the classical distinction between natural and positive law sets the wrong parameters for the debate. The concept of human rights does not have its origins in morality, but rather bears the imprint of the modern concept of individual liberties, hence of a specifically juridical concept. Human rights are juridical *by their very nature*. What lends them the appearance of moral rights is not their content, and most especially not their structure, but rather their mode of validity, which points beyond the legal orders of nation-states (IO, 190).

Through the sanctions represented by administrative power, space for the individual to act strategically is created and maintained. Whereas moral rights derive from duties, human rights are "actionable individual rights whose meaning at least in part is to free legal persons in a carefully circumscribed manner from the binding force of moral commands by creating domains of legal conduct in which actors can act in accordance with their own preferences" (IO, 191).

Habermas claims that because human rights "are no longer judged and combated *immediately* from the moral point of view, but rather are prosecuted, *like* criminal actions" according to an existing legal order (IO, 193), Schmitt is also wrong in his assertion that intervening in states' internal affairs on behalf of the preconditions of peace would result in an inhuman battle against evil. Rather, according to Habermas, human rights violations are met by international actors charged with upholding international law, thereby helping to secure the validity of that law. Both intervention and secession are only justified in light

of such violations.<sup>32</sup> “...The injustices against which legitimate resistance is directed do not result from the violation of a supposed collective right of national self-determination but from the violation of the basic rights of individuals” (IO, 142).

On the surface, Schmitt appears opposed to the way in which the moralization of war contributes to its change into total war. But Habermas suspects that, for Schmitt, the “evil to be avoided is not total war but the disintegration of a sphere of the political that rests on the classical division between domestic and foreign policy” (IO, 196). This sphere sees its survival in its ability to foster internal stability through the friend/enemy distinction on the foreign front. To the extent that this friend/enemy distinction is overlaid with a good/evil distinction, war threatens to make its way even onto the domestic front. While Habermas acknowledges the way in which an “*unmediated* moralization of law and politics does in fact break through those protective zones that we want to have secured for legal persons for good, indeed moral, reasons...,” this does not lead to the conclusion that international politics should be kept free of law or morality (IO, 199). But he also claims that the unmediated moralizations Schmitt fears are a fiction because they are actually “sham legal legitimation[s] for an intervention which is in reality nothing more than a struggle of one party against the other” (IO, 200).

He claims that it is not expansion but problem-solving around shared risks that requires cross-border policy, and this is best thought of not as world government but as an extension of the domestic sphere. In other words, the impetus to intervention arises not from an increasing merging together of citizenries or publics, but from interdependence.

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<sup>32</sup> In this, Habermas argues against Walzer for the appropriateness of intervention (Walzer 1977).

In this sense, he contrasts extension to expansion, the latter of which is still within the framework of external sovereignty, which, he argues, is an “anachronism” (IO, 150).

These previous issues, of the status of human rights as legal rather than moral and of the increasing interdependence and decreasing external sovereignty of nation-states, still leave untouched Schmitt’s second and third claims about the mutual exclusivity of liberalism and democracy, and the distinctiveness of politics. Habermas responds to these claims through refusing Schmitt’s characterization of politics as a totality, insisting upon the foundation of public debate in plurality. In “The Horrors of Autonomy,” Habermas characterizes the main problem with Schmitt in terms of divorcing liberal theory from democratic will-formation as general participation in public discussion, and replacing it with a will-formation that occurs wholly within an ethnically homogeneous parliamentary sphere that is acclaimed by the masses (Habermas 1989, 139).<sup>33</sup> “Schmitt conceives of political will-formation as the collective self-affirmation of a people,” so that a public process of opinion- and will-formation is not necessary (IO, 135). This amounts to the opposite of contract theory in which the “people” are the product of the contract, and also differs from a “noninstrumental conception of politics based on the idea of the communicatively acting person” (IO, 139). The anonymous public plays a crucial role in institutionalizing a political process that is the application of administrative power legitimated in terms of a generalizable interest rather than a battle of good and evil.

Steven Lukes, in “Gods and Demons: Habermas and Practical Reason,” considers Habermas’s formulation of “generalizable interests” and his assertion that communicative

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<sup>33</sup> Future references to this title are abbreviated HA.

reason allows sufficient specification of such interests to overcome decisionism with regard to practical questions and to avoid irreconcilable ultimate values (Lukes 1982, 137). He thinks that Habermas fails to deliver on both counts. Instead, Lukes argues that “...the principle of universalization ... requires .... a *decision* whether or not to let one’s actions and choices be guided only by maxims and norms which pass the test in question” (Lukes 1982, 145). When Lukes says that Habermas does not overcome the moment of decision, he makes a claim with which Habermas would probably agree. Habermas says that he seeks, through the celebration of public discussion, “realistic approximations to the idea of forming as rational a consensus as possible under the pressure to make a decision” (HA, 138). In contrast to approaches that focus on the moment of decision, including Derrida’s insistence on the ethical implications of the contingency that freedom places at the center of decision, Habermas argues that:

The legal rationalization of force must not be conceived as taming a quasi-natural domination whose violent core is and always remains uncontrollably contingent. Rather, law is supposed to dissolve this irrational substance, converting it into a ‘rule of law’ (BFN, 189).

But Lukes moves on to critique Habermas’s view that one can expect “stages in progress towards increasing rationality” so that the sphere of consensual action increases as communication is increasingly undistorted. When this claim is placed next to Habermas’s insistence on the continued centrality of the individual, “he assumes that such practical discourse will lead to an endogenous change of preferences and perspectives on the part of the communicators such that shared needs and ‘consensual action’ will predominate” (Lukes 1982, 147). He argues that Habermas rejects the Humean position

that morals arise only because of the need for decisions about how to dole out scarce resources, and that the implication of this rejection is that society can overcome both self-interest (increasing rational appeal to generalizable interest) and scarcity (better policies from increased rationality). Lukes finds such claims unpersuasive even given Habermas's own disagreements with Kohlberg, which are themselves unresolvable on any rational basis so that the choice between them amounts only to a decision.

And in this, Lukes raises an issue that Habermas more directly faces in his later work, which is that solidarity does not emerge solely through discussion but that deliberation must be accompanied by sanctions both for effectivity and for private autonomy.<sup>34</sup> Habermas's deployment of administration on an international scale is a result of his having modified this claim, with the result that solidarity is replaced by problem-solving as a goal on the international level. In Habermas's recent accounts of the political process conflict can be accommodated and displaced through recourse to administrative power.<sup>35</sup>

But this raises questions about how opinion- and will-formation would be linked on the international level. This poses deeper problems because it arises from the requirement that administration play both integrative and implementing roles. Patchen Markell argues that the version of constitutional patriotism that emerges from Habermas's account amounts to a relation between state and society that does not always celebrate a

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<sup>34</sup> In "Three Normative Models of Democracy," Habermas explains that "the integrative force of 'solidarity,' which can no longer be drawn solely from sources of communicative action, should develop through widely expanded and differentiated public spheres as well as through legally institutionalized procedures of democratic deliberation and decision-making" (TNM, 28).

<sup>35</sup> Though Mouffe, among others, says it cannot (Mouffe 1999, 5).

civic nationalism, and also sometimes results in angry resistance. Like the liberal citizens who criticized public authority after absolutism, such citizens find fault with their own government. Markell says that, for Habermas, demonstrations against the German government's bungled handling of anti-immigrant violence "were important not because they *expressed an identity* but rather because they *resisted an identification*, that is, because they refused the claim of the state to be a true or an adequate instantiation of the will of the German people" (Markell 2000, 57).

What is significant in Markell's account for the argument here is that specific people pointed to the mismatch of opinion and will, to the way in which anonymity displaces disagreement, and that this was made possible because the political system was at hand to hear these complaints about the way policy was being implemented. This explains why Habermas wants to have policy originate within borders or at least from a regional body that matches a cultural group. He sees European integration not as the creation of a "European people" but as the "European-wide political public sphere embedded in a shared political culture" (IO, 153).

But where communicative power and administrative power are themselves separated from administrative implementation by international borders it is unclear how such resistance will be voiced. For example, someone in Afghanistan, who is not American, objecting to American programs implemented in Afghanistan, must argue "this is not the will of the American people." In such cases, it is possible that protests against implementation might not reach the ears of the validating public sphere. Certainly, information about the effects of U.S. policies in Afghanistan after the recent war has been

scarce in the U.S. In a sense, the same elements that permit traversing international borders (the direction of power and anonymous subject) make it unclear how administrators should respond to dissent in the affected country. It is clear that a shift from ethical or moral integration to “problem-solving” as goals form a necessary concession in carrying administrative power across borders, but the implications of this shift have not been fully explored in Habermas’s work.

#### **SECTION 4: CONCLUSION AND REMAINING QUESTIONS**

The central theme running throughout Habermas’s writings on administration, especially the more recent work, is the challenge of reconciling legitimacy and effectivity. This is a very old question in the literature on politics and administration, but Habermas’s innovations on the question generate problems when it comes to the effect that specifically administrative or implementing factors can have on post-decisional reconsideration of democratic will. As a result, Habermas obscures the place of administration as part of the continuation rather than the culmination of the governance process.

Along these lines, Habermas refers to the special problems generated by policies that are irreversible. He distinguishes between what majority-rule decisions represent in a deliberative democracy versus what they signify in a bargaining situation: in deliberative settings, decisions represent a “caesura” of discussion, while in a bargaining situation, decisions reflect the current balance of power (BFN, 179-180). Because decisions that are simply a break in discussion imply the possibility of resuming that discussion later, “doubts about the legitimacy of majority decisions on matters with irreversible consequences are

revealing in this regard” (BFN, 179). But he says no more than this.

In one sense, Habermas does manage to extend the promise of revision to policy implementation. By insisting that his distinction between decision and implementation is not institutional but functional, he does not exclude the possibility that democratic participation can take place at the institutional site of policymaking when moral and ethical decisions still remain to be made. But this functional separation of moral, ethical, and pragmatic reasons makes it difficult to appreciate the effect that pragmatic reasons can have on prior moral and ethical decisions. Often it is only at the implementation phase that many people find that moral or ethical decisions resulted in policies that cannot be described in the same moral or ethical terms, or of policies that made them aware of other goods that were being sacrificed.

So such political situations - often the most important and challenging - where irreconcilable goods or interests are at stake, or where the irreversibility of results cuts off the possibility for revision and the continuance of democratic deliberation - are labeled with the least admirable pedigree - “compromise.” And bargains that are made legitimate because of a balance of power include values and choices people hold dear, perhaps the dearest of all because they distinguish themselves from others.

Thomas McCarthy adds that the objects of an autonomous will, including public values and the common good, are “less susceptible of compromise than conflicts of private interest” (McCarthy 1998, 150). He argues that the “mutual accommodation” (McCarthy 1998, 152) such agreements represent does not “have the cognitive sense of succumbing to the force of the better argument” (McCarthy 1998, 151), and neither can it be called



strategic in Habermas's sense. However valid McCarthy's point, the claim here is that only by focusing specifically on administrative implementation can one see the different trajectories of agreement on norms or values, and agreement on policy. For this reason, Habermas's fear that norms will be compromised is perhaps misplaced. A more pressing concern might be that they are not subject to compromise nor to reconciliation.

In the end, how Habermas addresses this question of opinion- and will-formation is crucial because it facilitates a move beyond a discourse theory of law and toward a theory of democracy. His formula for juxtaposing universal and specific, national and local in such a way that 1) social power in both its forms is overcome, and 2) administrative implementation in the present is enlisted in the purpose of integration for the future, means that people are compelled to justify themselves in terms of reasons that cannot draw upon the dilemmas generated by administrative power.

## CHAPTER 4 - ADMINISTRATION IN PUBLIC

As the previous chapters showed, the conceptual, institutional, and practical links between administration and politics centrally concern both Hannah Arendt and Jürgen Habermas. Both reject traditional pluralist accounts of the relationship, in which legitimacy is conferred on administrative acts through the aggregation of individual preferences. But they have different senses of the appropriate relationship of administration to law and political action. For Arendt, what distinguishes administration as a part of good government from bureaucratic administration is its attention to the world alongside political actors, and its home in a system of law in which the other side of tacit consent is freedom of dissent. For Habermas, what sets the administrative aspect of government by law apart from liberal and welfare state forms of administration is that it is the final moment in a political process of translating communicative power into government sanctions through the medium of law.

These accounts modify in important ways the traditional debates about the relationship between politics and administration and about separate powers. This chapter will consider Habermas's and Arendt's answers to two important questions that have often emerged in these debates. Their contrasting responses offer a way to rethink current controversies that will be considered in Chapter 5. First, to what extent should administrators, with their expert authority, exercise discretion and independent judgement? Section 1 argues that Habermas's account of the relationship between politics and administration is best characterized by the demand to limit administrative discretion to revise political decisions, while Arendt's approach results in a demand for what might be

called administrative discretion alongside political freedom. Second, what criteria or forms of judgement should guide political actors and is this different than what should guide administrators? Section 2 suggests that their responses take different shapes: Habermas thinks administrators and political actors should be guided by different sorts of reasons, while Arendt thinks the work of administrators and political actors should be held up to different standards.

The two questions and answers point to their different views on the reconciliation of politics and administration. Habermas thinks it is crucial to limit discretion because politics and administration must be reconciled, not through common application to a substantive policy goal, but through construing both in terms of their appropriate contributions to the increasing rationality of the political decision making process in which different types of reasons are given at the right moment. Arendt implies that administrators have to be discreet because administrative and political standards often cannot be reconciled. The chapter argues that Arendt's account of administration is a more promising resource than Habermas's for those trying to understand the conditions, including administrative institutions, that allow political freedom to flourish.

## **SECTION 1: DELIMITING ADMINISTRATIVE POWER - DISCRETION AND DISCRETNESS**

A central issue in any analysis of administration as a part of democratic government is the extent to which administrators, with their expert authority, should exercise discretion and independent judgement. As was discussed in Chapter 3, in

Habermas's work, administration is properly seen as the completing moment in a process of identifying and implementing political will. For Habermas, the direction of power - from communicative to administrative - should be tightly controlled so that the salutary effects of a participatory system limited by rights can be felt. When a decision has been properly made, the discretion of administrators to reconsider the normative reasons supporting the decision should be limited. But where politics is not viewed as a process of identifying and implementing a political will, as in Arendt's work, the issue of discretion can mislead. The main concern from this perspective is appropriately delimiting administrative goals in light of the political life that moves alongside the upkeep of the world.

This section will take up this question of administrative discretion and explore the sources and implications of this aspect of their contrasting approaches to administration by government. The section will suggest that a key to understanding the role of discretion in their work can be found in the fact that Habermas characterizes the fundamental questions of political institutions in terms of a contrast between Kant and Rousseau, whereas Arendt views them through a contrast between Montesquieu and Rousseau. The results are a stress on limiting administrative discretion in the case of Habermas, and demanding what might be called administrative discreetness in the case of Arendt. For Habermas, administrative discretion must be limited within a single process under the control of law while for Arendt administration discreetly confronts politics as a separate sphere provided for by law's boundaries.

Habermas thinks that some of the most fundamental questions about political

institutions, including who should control administration, can be characterized in terms of a contrast between Kant's assertion that human rights are primary to a just political community, and Rousseau's focus on popular sovereignty as the source of legitimacy (BFN, 99-104). Both authors, according to Habermas, try to describe the appropriate balance between rights and democracy, and both fail because they locate the balance in a particular content rather than in a process of will-formation. Kant starts with natural rights and assumes that, given the autonomy to choose laws and govern themselves, individuals will embrace these rights and the democratic state that enforces them. Kant's account is problematic, Habermas argues, because it at once depends upon the social contract delivering such rights (it presumes an internal connection between them), and downplays the importance of the social contract by prescribing the rights it must recognize. Rousseau, according to Habermas, starts with the ethical community that transforms itself into a body oriented to its common good by way of formal laws that prevent particular interests from defining the public project. Such a body is not constrained by natural rights from the start, but will presumably not adopt laws that contradict human rights. This cannot account for Kant's concern with how the individual reconciles herself to the requirements of law, so that, as Habermas points out, for Rousseau the government must grow larger in proportion to the growth and diversity of the community in order to maintain control.

Another way to characterize Habermas's critique of Rousseau and Kant is that they both left enormous holes that require the state to step in and pick up the slack in translating human rights into actual policy, and this large amount of discretion itself is not

obviously controlled by a democratic public. For Rousseau, this occurs when the territory and population of the state have grown so large that sympathy and solidarity alone cannot deliver conformity to a common good that has been stretched too thin to have any personal resonance. For Kant, this occurs when philosophers must help design constitutions so that a good outcome results even though democratic majorities are composed mostly of individuals who seem to be acting strategically rather than autonomously.

It can be argued that Habermas's project is to figure out how this discretion can be limited. He thinks that the solutions offered by Rousseau and Kant are unsuccessful because they try to seal up the holes by prescribing ethical or moral rules.<sup>1</sup> Instead, Habermas argues that the discretion of government officials must be limited by the requirements of an argumentative process, a process that is not necessarily tied to institutional boundaries. In a well-known move, Habermas asserts that this issue can be addressed by attending to the "*mode of exercising political autonomy*" and not "*what is willed*" but "*how the political will is formed,*" specifically by ensuring, through the specification of procedural types of rights whose contents must then be filled in, the "communicative form of discursive processes of opinion- and will-formation" rather than relying on general laws (BFN, 103).

Habermas asserts that Arendt reaches a Rousseauan conclusion about the priority of democracy to natural rights. The republican view Arendt represents, according to

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<sup>1</sup> Honig characterizes the issue as a tension between authorship and interpellation (Honig 2001, 794). In this sense, citizens are the authors of law but also persons in need of exceptions to enforcement of the law.

Habermas, holds that individuals make themselves into a political community through their participation and that, to the extent administrative resolution of issues substitutes for self-government, it undermines the political group that is itself the only means of delivering human rights. According to Habermas, her work reflects the “contract theory of natural law” (Habermas 1994a, 225).<sup>2</sup> His description of her notion of power as “dogmatic” arises from his belief that, for her, politics is “directed against the state apparatus” because that apparatus interferes with the development of a “political totality” (BFN, 297).

But his characterization of her views on government imports a contrast between Kant and Rousseau, one based on a notion of government acts as a reflection of sovereignty, a notion that ill-fits Arendt’s approach. Looking more closely at it can reveal problems with Habermas’s own discretion approach. At some points in her work, Arendt seems to suggest a large measure of discretion for administrators addressing social problems, far exceeding the limited discretion Habermas permits to administrative implementation. Indeed, some claim that she wants to turn all such problems wholly over to experts. For instance, on the question of access to decent housing, Habermas considers this a prudential right that is valuable in the public eye to the extent it outfits individuals for their roles as citizens, and as such should be subject to debate and appropriate action by administrators based on the outcome of democratic deliberation. Arendt, however, insists that there can be no debate about such a question, implying that it should be addressed by government without political involvement. At other times, however, Arendt seems to worry that administrators bring into public life an element that is at odds with the

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<sup>2</sup> Future references to this title are abbreviated HACCP.

standing and role of political actors; for this reason she wants to limit their authority.

What this points to, however, is not an inconsistent stand toward discretion, but to the way in which discretion is an inadequate concept given her understanding of the relationship between politics and administration. The way she sets action and politics free requires a rethinking of administration outside the formula of political will and limited administrative discretion. Arendt's concern is not that administration hinders a "political totality," as Habermas claims she fears, but that politics will be equated with a decisionmaking process, or be seen as culminating in an administrative policy in which unpredictability has been reduced to a question of exercising discretion where particular cases demand exceptions.

An important indication of Arendt's different approach to this set of questions is her choice of Montesquieu rather than Kant as a contrast to Rousseau. Rejecting Rousseau outright, she takes her cue from Montesquieu, for whom political, as opposed to philosophical freedom, "consists in being able to do what one ought to will" (BPF, 161). This notion of political freedom delivers to her work a sense of worldly freedom in which the political and administrative realms intertwine. Arendt argues that Montesquieu returns to a very old understanding of freedom as political rather than philosophical, so that, whatever the causes of one's difficulties - psychological, physical, or social -

the power that meets these circumstances, that liberates, as it were, willing and knowing from their bondage to necessity is the I-can. Only where the I-will and the I-can coincide does freedom come to pass (BPF, 160).

Arendt holds up the civil disobedient as an example of one who exercises political freedom.



In contrast, the philosophical view of freedom is “derived from the notion that every act must psychologically be preceded by a cognitive act of the intellect and a command of the will to carry out its decision” and holds that perfect freedom cannot be tolerated in society, because politics itself is concerned primarily with conflicts over the necessities of life in a world with finite resources (BPF, 155). Philosophical freedom is sometimes understood in terms of an inner struggle, or in terms of being left alone, as in the “...ideal of a free will, independent from others and eventually prevailing against them” (BPF, 163), or in terms of sovereignty, which she describes as either one will or many isolated wills that happen to match. According to these approaches, freedom must be limited in favor of a just resolution of such conflicts. Arendt asserts that the conscientious objector is reflective of the “Kantian/Rousseauan solution to the problem of obligation” (CR, 84).

Habermas might well have provided for her an example of philosophical freedom, of equating freedom with will and the dangerous struggle to implement it in a world of different wills. Arendt criticizes such an approach because she sees in it an underlying analogy between inner will and political will. This leads to a concern with limiting freedom, and equates administration with setting freedom’s boundaries. She rejects this view that freedom is something that should be limited by administrative sanctions so that communicative reason can do its legitimate work. Thus, the dynamic put in place by the Kant/Rousseau scheme is that, on one hand, democratic political action is limited, and on the other hand, administration is limited in its discretion. And limiting discretion in this sense amounts, for Arendt, to stopping politics and to guiding administration at the

expense of political freedom. Though ostensibly of limited discretion and therefore reach, Habermas's administrative power actually has to be immodest in the face of challenges that arise after communicative reason has made a decision.

So, if she rejects the set of concepts that limits political action, does she also reject the limitation of administrative discretion that is tied to these concepts? If so, what becomes of administration if it is set free from the careful scrutiny of representatives? She poses a different way of thinking about the appropriate limitations on administrative power. Broadly, the context of such limitation is set, first, in the distinction she sees between bureaucracy and administration as discussed in Chapter 1. In this sense, administration is attention to the world that disappears along with political life under the conditions of totalitarian bureaucracy, so that administration is not addressed to "mankind," or the progress of humanity but is directed toward keeping the world and exists alongside politics.

Instead of limiting discretion, Arendt's work suggests the limitation of administration as a "discreetness" in the face of the world and the associations that illuminate its contents and demands. This characterization uses the word "discreetness" not because Arendt uses this term, but because it captures another sense of discretion. The most common usage in public administration issues conveys a sense of judging or acting on one's own, and it raises concerns about "social engineering," elitism, and aloof experts all acting outside the scope of democratic control. But another sense of the word conveys (1) modesty, and (2) a "judicious reserve in one's speech or conduct"<sup>3</sup> that does

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<sup>3</sup> Webster's II, New Riverside University Dictionary.

not set administration free so much as circumscribe the claims administrators can make to legitimacy and salutary effects. The usual questions of discretion assume a different shape when discreteness is all one can hope for, and when discreteness itself holds more promise for freedom than discretion. The rest of this chapter will explore the contrast between limiting the discretion of administrators and insisting that administrators be discreet.

## **SECTION 2: GUIDING ADMINISTRATION - REASONS AND STANDARDS**

An important point of contrast between Habermas's strategy of controlling administrative power through limiting discretion and Arendt's hope of maintaining a focus on political freedom by insisting on the discreteness of administrators is their respective views of the difference between what should guide administrators and what should guide political actors. Habermas thinks administrators and political actors should be guided by different sorts of reasons, while Arendt thinks the work of administrators and political actors should be held up to different standards. This contrast relates to a crucial difference in how the two authors conceptualize the relationship between politics and administration - where Habermas views the two as different moments in the same political process of increasingly rational decisionmaking and implementation, Arendt views the attempt to "keep the world" through administrative acts as an important human endeavor that runs alongside political life. Habermas, with his insistence that government by law requires a hierarchy of reasons that preserves the intent of political decisionmakers, largely subverts the question about the continuation of political contest through post-decisional dissent that motivates much of Arendt's later writing. And, with her insistence that social

concerns should not take priority over political power, Arendt sometimes seems to leave untouched the question about when political contest should stop so that coercion can be applied where demanded.

The section will begin by discussing Habermas's assertion that political actors and administrators should be guided by different sorts of reasons, so that administrators have limited discretion to reconsider political decisions, and will consider two kinds of critiques generated by this approach. Second, the section will turn to what some have considered to be an alternative to Habermas's focus on reasons - Arendt's version of the distinction between politics and administration in which judgements of the work of administrators are made in terms of whether it is discreet in the face of political actors with different standards. In contrast to Habermas's account, administration for Arendt has an experimental element, both because administrators can claim only that their work delivers improvements in the world, not progress, and because policymakers and implementers must work in a context of tacit consent and legitimate dissent. Finally, the section turns to the experimental element of administration in Arendt's work in light of the importantly non-experimental element of policies like those that extend and deepen civil rights. Arendt's comments on school integration will serve as a vehicle for considering what discreetness calls for when participants demand policies that are inflexible.

Habermas argues that administrators should be guided by different sorts of reasons than political actors because, according to him, this helps ensure that administrators contribute to the central goal of increasing the rationality of collective decision making. He writes that "The sole substantial aim of the project [of constitutional democracy] is the

gradual improvement of institutionalized procedures of rational collective will-formation, procedures that cannot prejudge the participants' concrete goals" (BFN, 489).

Administration comes into view as a part of this rational collective will-formation when it is seen as a particular kind of reasoning that moves the political decision making process forward when used at the right time. This decisionmaking process includes an anonymous public sphere in which the direction of administrative power flows from the free-for-all of the periphery to decisionmakers in the center and back out to administrators who complete the political process by delivering the fair value of rights. Habermas recognizes that diverse publics participate from the periphery, but on any given question there is one decision and one public will. This means that the distinction between periphery and center is drawn in relation to a particular decision that will be referred for implementation and depended upon for legitimacy.

Habermas views his project, at least in part, as extending Hannah Arendt's insights regarding power in a democracy. He argues that "Arendt conceives political power neither as a potential for asserting one's own interests or for realizing collective goals, nor as the administrative power to implement collectively binding decisions, but rather as an "*authorizing* force expressed in 'jurisgenesis' - the creation of legitimate law - and in the founding of institutions" (BFN, 148). He thinks this amounts to a limited understanding of politics as exercising political autonomy.

Politics cannot coincide as a whole with the practice of those who talk to one another in order to act in a politically autonomous manner. The exercise of political autonomy implies the discursive formation of a common will, not the implementation of the laws issuing therefrom... (BFN, 150).

In contrast to Arendt, Habermas splits politics into three aspects or moments in a process of will-formation that includes both political contest and administration. He suggests a “differentiation in the concept of political power” such that politics includes three aspects of political conflict: its founding, the contest for it, and the administration of political power. Habermas suggests that if one views “law as the medium through which communicative power is translated into administrative power” (BFN, 150), then one arrives at a more encompassing notion of politics as such. Through this “*empowerment*” of the discursive sources of legitimation, the political system is “kept free of illegitimate interventions of social power (i.e. of the factual strength of privileged interests to assert themselves).”

Habermas argues, in further contrast to Arendt, that the political system is protected from “social power” by a reliance upon reasons. A central aspect of the way Habermas employs the concept of “reasons” is that they are opposed to “opinions.” On one hand, reasons differ from opinions not primarily in the sense that opinions are uninformed but because the relative freedom of opinions from the pressure to decide or to be rational makes them widely inclusive. From this perspective, Habermas assigns a very important role to opinions because they are crucial to ensuring communicative freedom. On the other hand, Habermas thinks that for opinions to have purchase in the legitimate design of public policy they must be expressible in reasons that are extracted through anonymous and subjectless forms of public communication. He explains that “reasons are not adequately described as dispositions to have opinions, rather they are the currency used in a discursive exchange that redeems criticizable validity claims”(BFN, 35). From

this perspective, the political process is differentiated into opinion- and will-formation, with reasons, and not opinions, guiding and authorizing political will. Opinions are not the informed result of reasoned deliberation among citizens and their representatives, but are what must be left in the background if reasons are to successfully identify and implement good laws. Public policy, in his view, should be based on agreement on reasons rather than on opinions.

Habermas's view of opinions differs from Arendt's. She starts with a critique of representative government because it cannot deal with opinions, nor with the fact that administrators, and not representatives, are often the ones who hear and respond to opinions. Associations, and especially associations of civil disobedients, play a crucial role in pointing to aspects of conflicts that have their home in opinion rather than interest. This is important because, for Arendt, opinions, unlike interests, are irreducibly singular and not suited to aggregative representative mechanisms, and because opinions reflect a choice about whether to embrace group interests. Representative government and the administrative apparatus that carries out its mandates are unable to preserve the uniqueness of opinions, but they are suited to bringing interests into legitimate conflict. Opinions signal the health of the public sphere because they are not simply coincidental agreements on decisions of conscience, but reflect reciprocal recognition of others as opinionholders (CR, 58). For Arendt, a reliance upon reasons cannot assuage the tenuousness of the link between opinions and public statements of political will manifested in public policy.

Habermas argues that Arendt, in employing opinions this way, sees the political

realm as one of agreement on opinion and consensual action arising from this agreement, and that this blinds her to the important place of strategic and instrumental action in public life. Though he is greatly influenced by Arendt's attention to the public sphere and he finds her approach appropriate in describing the dangers of totalitarianism and the importance of political revolutions,<sup>4</sup> he thinks she insists upon a great divide between instances of common opinion and the vast areas in which opinions are not appropriate and experts should make decisions, and he thinks she is misguided and naive in this assertion. Habermas, in his early account of her concept of power, thinks she is plagued by a longing for the Greek ideal of self-government that is "unimaginable for any modern society" (HACCP, 220). The core of this problem, for Habermas, is that Arendt fails to distinguish between power and legitimate power based on reasons. He writes that, according to her, "both law and communicative power have their co-original source in the 'opinion upon which many publicly were in agreement'" (BFN, 147). If this is the case, power as such fails to account for strategic and instrumental action in the political sphere, and these are inappropriately characterized as neutral administrative issues.

On one hand this type of critique of Arendt is repeated often in the secondary literature, though it must overlook important elements of her work.<sup>5</sup> But on the other

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<sup>4</sup> Seyla Benhabib describes the influence of Arendt's work on Habermas's understanding of political life. "Arendt's discovery of the linguistic structure of human action, in my opinion, gave one of the principal impetuses to Habermas's subsequent theory of communicative action. Arendt's concept of public space is the second and equally important conceptual legacy that she imparted to Habermas" (Benhabib 1996, 199).

<sup>5</sup> Many of these further elements are spelled out in Chapter 2, but two more bear recounting here. First, this claim does not address Arendt's discussion of the special behavior called "lying" in which factual truth is strategically obscured and which has no positive role in public life. This is different than both representation of interests and exchange of opinions, both of which play positive roles in public. Second, in his assertion that Arendt would leave war outside the "city" and to the experts, as the Greeks did, Habermas overlooks her intense concern at the beginning of The Human Condition that scientists do not communicate in



hand, in Habermas's recent work, Arendt does not look so much naive as fundamentally disagreeing on the potential reach of communicative action. He thinks administration can be rehabilitated as long as it is a translation of communicative power, and reflects the demands generated wholly within the confines of communicative rationality. An important requirement of communicative reason, as discussed in Chapter 3, is a shift to a level sufficiently separated from specific subjects and interests to provide an anonymity that can justify administrative sanctions. But by solving the problem of controlling administrative power by insisting upon the potential of communicative reason expressed in anonymous linguistic structures and giving administration authority within these bounds, Habermas dodges the issue that motivates Arendt's ambivalence about experts - the continuation of political contest where opinion escapes anonymity by revealing the specificity and partiality of the world.

Unlike Arendt's sense that political action and administrative policies are constantly subject to one another's interventions, Habermas insists that validity depends upon the segregation of the dispersed forums of informal opinion-formation from the decision-oriented formal sphere. On one hand, Habermas equates opinion-formation with democratic deliberation while will-formation is the caesura in such deliberation marked by decision (TNM, 28). This corresponds to Fraser's distinction between weak and strong publics.<sup>6</sup> But on the other hand, the potential for the use of government power requires a

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any language, and her insistence that political decisions about war not be left to them for this reason.

<sup>6</sup> Habermas concedes the point of theorists such as Nancy Fraser (1992) that issues should not be kept off the public agenda simply because they concern matters that occur in private. He thinks that such issues are identified in informal processes, and that discussing them does not amount to a bias against privacy as Donald Moon (1991) fears. But when they have passed through the filters that lead to formal opinion- and will-

further differentiation between *informal* and *formal/political* opinion-formation.<sup>7</sup> With the vertical arrangement of citizens within the state, individual liberties generate informal opinion-formation that takes place through venues like public discussion, voting, participation in parties, and work in legislative bodies. However, in the light of the power of the state, informal processes ideally are joined by “institutionally differentiated opinion- and will-formation” (BFN, 135). All public dialogue is understood as funneled into the formal process that can in turn claim to have taken all of the “anarchic” material of the diverse public spheres into consideration, and administrators, as the completers of the formal process in their role as implementers, can exclude informal interventions.<sup>8</sup> Taking part in the implementation of government decisions - whether by consenting, obeying, or dissenting - is not “participation,” which is a name reserved for decision making and not for everyday tasks. These distinctions work together to generate a picture of administrative implementation (no matter how abstract) as the culmination of the political

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formation, then an intervention into private life may occur and work to ensure its legitimacy must be undertaken. But “...only the *regulation* of a newly defined criminal offense or the *implementation* of a social program intervenes in the sphere of private life and changes formal responsibilities and existing practices” (BFN, 314).

<sup>7</sup> In this way, he makes a distinction not just between expressing political will and implementing it (as in more traditional formulations like Goodnow’s), but also within the expressing side between informal and formal decisionmaking, and this increases the authority of administrators who are charged with implementing formal decisions.

<sup>8</sup> James Bohman does not agree with Habermas that a distinction between informal and formal processes is implied when government is founded, and he argues that it undermines the participatory component of democracy. He calls such an approach a “two track model” (Bohman 1996, 177). He claims that even Habermas thinks that procedurally there is no difference between informal and formal decisionmaking. The procedural element of Habermas’s work, according to Bohman, makes such a distinction meaningless because procedures govern both in the same way. Bohman says that for Habermas social complexity dictates that sovereignty rest in an anonymous public sphere, so that “whereas the informal spheres of opinion formation remain directly subject to the norms of communicative association, the formal institutions in which decisions are made are not” (Bohman 1994, 924). But if the formal institutions are themselves democratic, writes Bohman, then the distinction evaporates.

process around a particular question, rather than the continuation of the process in the choice to apply government resources to a particular solution among many.

But Habermas's insistence that administration is distinguished by a distinct form of reason-giving and not by an institutional site, means that debate during the implementation of law can amount to formal decision making. This answers one charge that had been made in the past against Habermas's insistence upon different types of reasons, a charge that this depoliticizes administration and thereby betrays the insights of critical theory regarding the depoliticization of the public realm.<sup>9</sup> According to Lorne Sossin, Habermas limits administrators to a functional role that denies the political nature of implementation questions. "Habermas looked to administrative systems simply as the object to be resisted" (Sossin 1993, 378). For Sossin, this view of administrative discretion is "both dysfunctional and profoundly irrational" because the ideology of controlling the bureaucracy excludes or limits participation at the agency level (Sossin 1993, 376). In this way, the influence of agency officials in the democratic process is restricted as they are precluded from engaging in the types of exchanges that can deliver communicative rationality (Sossin 1993, 375).

The danger...is that rules designed to control discretion may lead to formally legitimate decisions at the expense of leading to just decisions. To prevent this, it is necessary to create the political space for administrators to move beyond these rules with the legitimate exercise of their decision-making. Discretion must come to be accepted as the core of bureaucratic authority rather than the murky

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<sup>9</sup> Asking a question about the separation between politics and administration implicit in Habermas's work, interviewer Torvid Nielsen in 1990 refers to Thomas McCarthy's view that: "If self-determination, political equality, and the participation of citizens in decision-making processes are the hallmarks of true democracy, then a democratic government could not be a political *system* in Habermas's sense" (Habermas 1994b, 167, [future references to this title are abbreviated JA]).

periphery (Sossin 1993, 382).<sup>10</sup>

Sossin thinks that administrative discretion should be viewed as critical judgement that can “attain democratic legitimacy... through fostering a direct communicative relationship between administrators and those affected by administration” (Sossin 1993, 383). In this respect, Sossin’s critique is similar to Bohman’s suggested relationship between agency administrators and the public sphere arranged around agencies and recalls the type of participation that Lowi dreads.

And the character of such administrative involvement in deliberation goes beyond approaches such as that represented in recent attempts to open agency actions to the critique of “consumers” of public services.<sup>11</sup> In his study of the increasing use of discretion by tax system administrators in Canada, under the guise of “customer service,” Sossin finds that “the group most likely to benefit from this more service-oriented tax administration, and the corresponding decreasing emphasis on enforcement, are those taxpayers already most advantaged in the market and most privileged in terms of tax avoidance opportunities by the Income Tax Act” (Sossin 1993, 388).

In this way, “public officials under the welfare state are accorded both too much and too little discretion to be communicatively rational or democratically legitimate”

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<sup>10</sup> See also McElligott who celebrates public administrators as important sources of resistance to the hegemonic culture and economic structure. He asks “What is a better way [than Total Quality Management and similar approaches] to think about democratizing state services, and how can it appeal to both clients and workers simultaneously” (McElligott 2001, 229)? Most importantly, McElligott argues for increasing the discretionary decisionmaking power of front-line workers. He thinks that a shift to more decentralized, smaller, and temporary delegations of duties and powers will avoid the tyrannical arbitrariness that might accompany such discretion under Weberian bureaucracy.

<sup>11</sup> For example, Sossin might argue that the suggestions made by Osborne and Gaebler (1992), and adopted to some degree by the Clinton administration’s “Reinventing Government” initiatives, do not go far enough to open up the possibility for critical exchange.

(Sossin 1993, 390). Officials have too much authority to avoid meaningful argument or reason-giving in the public sphere at the same time that they are severely limited in their ability to apply law in different ways that meet local or individual circumstances. Sossin laments that “officials must adhere to rules rather than reason...” (Sossin 1993, 391).

But in his most recent work Habermas moves beyond the view of administration as something to be resisted and embraces the integrative role of this subsystem when it completes the political process. Administration in the institutional account concerns technical questions of implementing policy, but does not explicitly address how such questions are to be subordinated to moral and ethical questions. The expertness of administrators who are separated from their counterparts in the other branches, and competently fulfilling their particular functions, does not prevent a “self-programming” by an eccentric administration that is anathema to democracy. “The logic of separated powers demands instead that the administration be empowered to carry out its tasks as professionally as possible, yet only under normative premises not at its disposal: the executive branch is to be limited to *employing* administrative power according to the law” (BFN, 188). The ideal of administrative policy implementing a generalizable interest invokes democratic deliberative structures so as to prevent the independence of direction that a pre-given general interest might allow.

Sossin and Habermas agree that a successful political process includes conforming to appropriate types of reason-giving. Habermas tempers the problems that might be generated by an overly institutional interpretation of this requirement by insisting that administrators at the agency level may face decisions that require the use of normative

reasons and modifying his description of when the political process begins and ends accordingly. The result is that they agree that the appropriate issues for administrative participation in communicative rationality are limited to those that do not revise the original decision.

Habermas places his faith in limiting discretion not because he believes that administrative reasoning is somehow tainted, but because politics and administration can be reconciled when they are evaluated in terms of a process of rationalizing decision making. For both authors, it is crucial to be able to evaluate whether a particular policy, taken as a whole from deliberation to implementation, represents progress in rational will-formation. To do this, administrative policies are evaluated in terms of the reasons that inspired decisions. On his account, rational collective will-formation cannot stop at identifying and deliberating about reasons, but must implement decisions using a different set of reasons that leaves the first set intact. Limiting the discretion to revise decisions on moral questions does not prohibit the discretion to take up moral questions that accompany and deepen, but not change, original decision. For example, on the question of tax policy, where a particular law was adopted because it is “fairest,” administrators devise means for implementing the decision without reconsidering the criterion of fairness. In this effort, they might have to make very important decisions about what is fair, but political actors must be able to use this reason to describe the results. This goes beyond the limited democratic participation envisioned by “customer service” but stops well short of revising the original decision.

But Habermas’s abstract version of separate powers, while it answers Sossin’s

criticism, introduces a problem that invites a second type of critique. This critique, offered by authors like William Connolly and James Tully, focuses on his account of constitutionalism as modes of agreement that can be characterized in terms of progress. From this perspective, administration is depoliticized from another angle as it is allowed to claim authority arising from its role in delivering progress in rational will-formation. Because Habermas's approach includes the ideal that everyone agrees to policies for the same reasons, that are then held up when evaluating administrators, he has, he admits, a problem when bargains enter the scene.

According to Habermas, the challenge to deliver progress in rational will-formation is made difficult by the fact that involved parties often do not agree to laws for the same reasons. In many cases, according to Habermas, generalizable interests are not recognized by the participants so that the moral nature of the question is obscured and evaluation is hampered. This confusion is problematic because for rationality to prevail generalizable interests must be agreed to for the same reasons, while other kinds of interests can be settled through agreement for different reasons through a process to which everyone agrees.

Whereas a rationally motivated consensus rests on reasons that convince all the parties *in the same way*, a compromise can be accepted by the different parties each for its own *different* reasons.... bargaining first becomes permissible and necessary only when particular - and no generalizable - interests are involved, something that again can be tested only in moral discourses. Fair bargaining, then, does not destroy the discourse principle but rather indirectly presupposes it (BFN, 166-7).

He insists that bargaining carries with it a threat that the moral nature of questions will be obscured. He writes that "bargaining is a special type of communication..." and a danger

lurks “that compromise procedures will be applied to moral or ethical questions, so that these get *redefined* into strategic questions without anyone’s noticing or calling attention to the fact” (BFN, 177).<sup>12</sup> From this perspective, bargains that confuse different types of reasoning should be off-limits, such as the welfare state compromise of a welfare net in exchange for docile workers, and the guarantee of low-income housing if it is racially segregated.

But, while Habermas worries about remembering the moral nature of policies that are adopted for strategic reasons, a greater problem arising from his account is that implementing strategic compromises is given moral significance as administrators complete progress in rational collective will-formation by upholding the rule of law and by implementing fair bargains. He explains that “in complex societies... it is often the case that even under ideal conditions neither of these alternatives [moral or ethical discourses] is open” because “it turns out that all the proposed regulations touch on the diverse interests in respectively different ways without any generalizable interest or clear priority of some one value being able to vindicate itself” (BFN, 165). In such cases, bargaining or compromise-formation emerges as the only option (BFN, 165). In fact, it turns out that “compromises make up the bulk of political decision-making processes in any case...” (BFN, 282). Habermas does not conceal his ambivalence about this situation. The result of this relationship between moral and strategic is often that compromises between people

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<sup>12</sup> As Daniel Conway points out, in opposition to Habermas’s claim that strategic reasoning must be considered primarily in light of its destructive effects, Foucault argues that “the ubiquity of hidden power relations, which Habermas claims would render all political deliberations otiose, in fact places a premium on the faculty of practical reason” (Conway 1999, 69) in the sense that subjects must be free to a certain extent for there to be a subject who is subject to power rather than an object.



with different reasons are treated as more than bargains because so much is at stake in their successful implementation.

Connolly finds that this dichotomy between moral and strategic reasons represents both an unwieldy account of political practice and a problematic version of progress. Rather than regretting the absence of agreement for the same reasons and rejecting the pressure to produce the same reasons, Connolly suggests thinking of politics in terms of assemblages of those who support a particular policy rather than agreement on reasons for policies.

Such an assemblage would not take the form of a general consensus, in which each constituency supports the programs in question for the same reasons as the others. Nor would it reflect the will of a nation, organized around a unified language, ethnicity, race or religion. Nor would it amount to a simple coalition of interests. Rather, a majority assemblage is a mobile constellation in which some support the programs in question out of dire economic need, some out of particular self-interest, some because they are implicated with others who need these programs, ...some because they seek to meet responsibilities flowing from this or that creed, and most out of some mixture of these diverse considerations (Connolly 1995, 95).

He argues that, rather than denying the “possibility of progress in politics,” this approach reflects a changed understanding of what should be considered progress. “Progress, on this reading, occurs when a pluralist culture appreciates more profoundly this dissonant interdependence between justice and critical responsiveness” (Connolly 1995, 188).

Some critics think that Habermas’s strengthened version of administrative power contradicts his newly weakened statements on consensus and universal norms. For example, Mitchell Dean fears the combination of a “weak transcendental status for this interpretation of universal norms” with the insistence that they “receive coercive authorisation in law” (Dean 1999, 187). He argues that Habermas’s account amounts to a

normalizing technique that issues “in procedures through which consensus is generated about norms” (Dean 1999, 188), and that his framework makes it difficult to see other forms of ethics as anything more than a modification or straying from communicative ethics (Dean 1999, 191). In this way, according to Dean, Habermas subverts the dilemmatic quality associated with public coercion. Similarly, Michael Power thinks that the conflicts to which Habermas points manifest a tragic choice between self-grounding with softened critique, or critical force without ground. By pairing self-grounding with critical force, Habermas tries to avoid the implications of such a choice. With this move, “the neoliberal model of reflective equilibrium replaces strategies of enlightenment” (Power 1998, 211). So, he worries about controlling administration but ends up giving administration, as the moment that completes politics, authority that is not reduced by a recognition of the limited status of universal norms. The authority granted to administration when it takes guidance from an anonymous subject and generalizable interest displaces the experimental and tentative interventions of diverse participants far more than the goal of the “ideal speech-situation” or “universal principles” ever could because it rests not upon universal norms but upon the role of implementation in securing the validity of the system as a whole.

In a similar way, James Tully thinks that Habermas’s view of constitutionalism as the increasing rationalization of political will-formation misunderstands such arrangements and imports this misunderstanding into its views of government institutions, including administration, especially given the context of globalization and the proliferation of sites of governance. Tully analyzes what he calls the dominant traditions of constitutional thought

- liberalism, nationalism, and communitarianism - each of which includes a particular view of the role of administration. “The three schools of modern constitutionalism disregard the hidden diversity of actual constitutional dialogue not only by laying down simplistic concepts of popular sovereignty and constitutional association as premises, but also by their corresponding concepts of constitutional dialogue” (Tully 1995, 131). He argues that Habermas’s work includes two views of such exchanges that submerge the complexity of actual governance practices and participation. “[T]he participants aim to reach agreement either on universal principles or on norms implicit in practice and, in both cases, to fashion a constitutional association accordingly” (Tully 1995, 131).

Tully argues, in contrast to Habermas, that the challenge to constitutional arrangements does not lie in trying to prevent instrumental reasons from subverting legitimate decisions, but in figuring out how institutions can still work in the midst of diversity and disagreement. “[T]he aim of negotiations over cultural recognition is not to reach agreement on universal principles and institutions, but to bring negotiators to recognise their differences and similarities, so that they can reach agreement on a form of association that accommodates their differences in appropriate institutions and their similarities in shared institutions” (Tully 1995, 131). He thinks that Habermas’s recourse to a generalizable interest “mis-identifies the *telos* of this type of constitutional dialogue, filtering out the diverse similarities and differences the speakers try to voice” (Tully 1995, 131).

In contrast to Habermas’s insistence that constitutional dialogue ideally produces agreement on reasons, Tully argues that

...[p]articipation is a strategic-communicative game in which citizens struggle for recognition and rule, negotiate within and sometimes over the rules, bargain, compromise, take two steps back, start over again, reach a provisional agreement or agree to disagree, and learn to govern and be governed in the context of relatively stable irresolution where the possibility of dissent is an implicit 'permanent provocation' which affects the negotiations. What shapes and holds individuals and groups together as 'citizens' and 'peoples' is not this or that agreement but the free agonistic activities of participation themselves (Tully 1999a, 171).

Tully thinks that, especially in the context of the new forms of participation ushered in by globalization, Habermas's renewed focus on formal channels of political participation as the only legitimate forum for public action is becoming less helpful in understanding political practice as well as less promising as a source of guidance about how to use public power. Seeing interactions between citizens of a constitutional arrangement as "practices of governance," rather than greater or lesser deviations from an ideal of communicative rationality from which strategic action has been banned, remedies the misguided focus on formal decision making fostered by Habermas's approach. "As a result of this more flexible and pragmatic image, the concept of 'reaching agreement' is different from the modern one and the corresponding attitude of the participants is more open to mutual understanding, accommodation, and conciliation" (Tully 1995, 135).

Tully finds a more promising resource in the focus on the "novel and relatively enduring practices of free, democratic activity in the present" in the work of Arendt and Foucault (Tully 1999a, 177). Tully's interest in this aspect of Arendt's work is motivated by efforts to understand not only the "relations of governance" but also the "practices of freedom" that are a crucial component in every social formation (Tully 2002, 540). He thinks that Arendt appreciates such practices of freedom that are obscured in Habermas's

work. Tully characterizes this contrast between Arendt and Habermas in terms of the very different efforts to push limits and enforce limits in governance. He argues that the “practical and historical approach oriented to testing and going beyond limits [represented by Arendt and others] has been shaped by a continuous critical dialogue with a contrasting metaphysical and universal tradition oriented to discovering and prescribing limits” that is found in Habermas’s work (Tully 2002, 535).

Building upon Tully’s insight, the argument here is that Arendt’s approach suggests an alternative view of government administration in terms of whether it is discreet in the face of political actors with different standards. Discreetness facilitates the transition not from communicative to instrumental reason, but from the standards of administrators who are engaged in “keeping the world” to a reassertion of the standards of political actors concerned with dignity and freedom. According to Arendt, the work done by administrators, because it intervenes in human affairs, taking them as its object, must be subjected to a different standard than the image that guided the policy design. She writes that “...while only fabrication with its instrumentality is capable of building a world, this same world becomes as worthless as the employed material, a mere means for further ends, if the standards which governed its coming into being are permitted to rule it after its establishment” (HC, 156). Running alongside administrative standards, political standards reflect a demand to participate in or direct or deflect governance by making opinions effective in the world. Sometimes political standards interfere with administrative efforts, but sometimes political standards lead citizens to demand public action, as with the students whose solidarity with university workers over the question of those workers’

wages arose from their lives as citizens (CR, 203).

While the centrality of reasons in Habermas's account generates a primary focus on evaluating administration's role in delivering progress toward improving political will-formation, for Arendt, administrative policy, with its focus on building the world, often can claim no more than a "fait accompli" that exists alongside political freedom. These conflicting standards account for both the balancing act she sees in councils between the qualities of the statesman and those of the administrator, and her later celebration of limited goals on the part of associations; they also illuminate her repeated references to the unacceptability and absurdity of arguing to let the world perish for the sake of justice. As the last section discussed, Arendt is not convinced that limiting discretion preserves freedom. By focusing not on the different reasoning processes (normative, ethical, and instrumental) that are required to achieve a single goal, but on the different standards - political and administrative - that govern descriptions of good results, she turns attention to the implications of dissent that emerges after majority decisions have been made and administrators have begun their work.

On one hand, Arendt's focus on the "here-and-now" of political practice results in a more definitive distinction between administration and politics because formal government acts are subject to administrative standards while political actors evaluate those policies or laws on the basis of political standards that may or may not be reconcilable with administrative standards. This starkly contrasts with Habermas's reconciliation of administrative and political through their status as different moments in the same political process. But on the other hand, Arendt's approach results in a less

definitive separation between administration and politics as formal institutions are understood as more porous and experimental, and more appropriately subject to the interventions of those making demands based on political standards.

Arendt's version of administration differs from Habermas's in two important ways. First, Arendt insists that administrators can claim only that their work delivers improvements in the world, not progress. For Arendt, this conceptual difference is represented in the contrast between Kant's abstract administrator and Kafka's world-builder. Second, administration in Arendt's work has an experimental element because policymakers and implementers must work in a context of tacit consent and legitimate dissent. In contrast, Habermas's work suggests that administrative acts cannot be described as "experimental" because faithfulness to majority decision already provides the context and goals of policy. The following paragraphs will characterize these differences in more detail.

First, for Arendt, differentiating administration from politics in terms of standards rather than reasons allows a rejection of administrative claims of progress that potentially interfere with political participation and freedom, while also offering a perspective from which to guide administrators in fulfilling the more modest expectations for improvement that result. She thinks that designing public policy so that it delivers "progress" impedes the reassertion of political standards after administrators have done their work. In its place, she suggests "improvement," amounting to a kind of pragmatic insistence upon marginal judgement when it comes to administrative goals, paired with an awareness that "improvement" gains authority when it demonstrates openness to political standards. So

for instance, administrators can make claims about the improvement that accompanies a greater supply of housing, but not about reconciling this with the loss of neighborhoods.

She turns to Kant to spell out her complaint about the notion of progress. While Habermas also criticizes Kant and rejects definitions of “progress” that emerge from moral sources external to the political process, the implication of Arendt’s work is that even claims to “progress” that come in the form of rationalization through communicative processes undermine the role of political standards in guiding the implementation of policy. From The Origins of Totalitarianism through the final lectures on Kant’s aesthetic theory, Arendt consistently rejects Kant’s invocation of the idea of a “progress of mankind.” For her, such an idea looms over the present, obscuring the dignity of each moment. It amounts to a reconciliation with reality through recourse to the abstract lens of history rather than through everyday attempts to understand or make improvements. She claims that recourse to “progress” is popular, despite the implications for the unfortunate present noted by Kant, because it “gives an answer to the troublesome question, And what shall we do now” (CR, 129)? Such a search manifests itself on the “lowest level” into a call to

*develop* what we have into something better, greater, et cetera. (The, at first glance, irrational faith of liberals in growth, so characteristic of all our present political and economic theories, depends on this notion.<sup>13</sup>) On the more sophisticated level of the Left, it tells us to develop present contradictions into their inherent synthesis. In either case we are assured that nothing altogether new and totally unexpected can happen, nothing but the “necessary” results of what we already know (CR, 129-130, emphasis added).

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<sup>13</sup> As for unlimited economic growth, this may have results that are better for the present and far worse for the future.



In this sense, embracing “development” means denying the possibility of something entirely new (BPF, 150). This is not only unfortunate but dangerous for in the past it led to the misrecognition of totalitarianism. Her well-known discussions of the significance of natality as a human condition convey the same concern.

In the last few sentences of her lectures on Kant, Arendt rather briefly suggests an alternative, namely judging government acts in terms of whether they bring “improvement.” She rejects

...the very idea of progress - if it is more than a change in circumstances and an improvement of the world- contradicts Kant’s notion of man’s dignity. It is against human dignity to believe in progress. ... There is no point at which we might stand still and look with the backward glance of the historian (Arendt 1989, 77).<sup>14</sup>

“Development” encourages evaluation in terms of potential for the future (despite what was present before), while “improvement” encourages a comparison with what was actually present before.<sup>15</sup> While it invokes the need for some sort of criterion to figure out what might constitute “better,” it does not automatically invite regret at a “wasted potential” or “what the future might have been,” nor does it try to deny factual reality by regretting that the impossible could not be achieved.

Rather, “improvement” as a claim for the acceptability of administrative action insists that factual truth rightfully provides a stubborn obstacle to political action.

Not the past - and all factual truth, of course, concerns the past - or the present,

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<sup>14</sup> Future references to this title are abbreviated LK.

<sup>15</sup> Develop has been defined as “to realize the potentialities of,” and improve as “to advance to a better quality or state.” (Webster’s II, New Riverside University Dictionary). Rorty ascribes a similar view to Dewey: “Instead of seeing progress as a matter of getting closer to something specifiable in advance, we see it as a matter of solving more problems. Progress is ... measured by the extent to which we have made ourselves better than we were in the past rather than by our increased proximity to a goal” (Rorty 1998, 28).

insofar as it is the outcome of the past, but the future is open to action. If the past and present are treated as parts of the future - that is, changed back into their former state of potentiality - the political realm is deprived not only of its main stabilizing force but of the starting point from which to change, to begin something new (BPF, 258).

And progress in the limited sense of improvement reflects her insistence that administrative goals begin and end in the world where political actors can provide resistance to administrative standards and administrative goals themselves are limited by the shape of the material world.

Arendt thinks that the notion of “progress” in Kant’s work has important links to his thoughts about government institutions, and leads him to claim that action can only be undertaken by the government - the “powers that be” - while the individual is limited to rebellion only when the freedom of opinion is abolished. “For Kant, the moment to rebel is the moment when freedom of opinion is abolished. ... your care for the world takes precedence in politics over your care for your self...” (LK, 50). She argues that Kant’s “actual theory in political affairs was the theory of perpetual progress and a federal union of the nations in order to give the *idea* of mankind a political reality. Whoever worked in this direction was welcome” (LK, 61). However, the “work” that such individuals carry out has the peculiar quality of being divorced from actual policy because the “freedom of opinion” for Kant does not imply the “freedom to participate in government.” When contemplative and active are mutually exclusive as in Plato “one gets an absolute distinction between the one who *knows* what is best to do and the others who, following his guidance or his commands, will carry it through” (LK, 60). This cannot be the case with Kant because his public

cannot be a public of actors or participators in government.... What was secret and unapproachable by definition was precisely the realm of government and administration. And... Kant could conceive of action only as acts of the powers-that-be . . . governmental acts (LK, 60).

For Arendt, Kant's theory suffers from an unbridgeable gap between the aspirations of present individuals for an improved world, and government acts.<sup>16</sup>

Habermas's claim that "only the administrative system can 'act'" invites the charge that his approach similarly sets public policy off limits to those who would challenge its authority by rejecting the reasoning structure set up by his "government by law."

Habermas's recourse to an anonymous subject obscures interventions by those who think a collective will is not appropriate and grants too much authority to administrators charged with upholding the rule of law. For Habermas, designating government as the only legitimate actor in the public sphere is part of a strategy to control administration by giving it authority to exclude interventions that do not conform to the reasoning requirements of the issue at stake. Where a generalizable interest forms the horizon of the issue, interventions that do not address this horizon must be filtered out. Where a generalizable interest is not present, parties whose interests are not affected should be filtered out. But in both cases, the authority of administrators in implementing statements

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<sup>16</sup> Cascardi provides one version of this problematic potentiality in Kant's work. He reads this relationship between potential and actual in Kant's work as Kant's attempt to provide a mode of validating the claim of moral progress in history through recourse to the language of symbolic human events. The paradigm example is that of the French Revolution, and the practical problem is the reconciliation of seeing and foreseeing (Cascardi 1997, 100). But, according to Cascardi, a paradox arises between the clear precondition of freedom to progress, and the necessity that the "diviner himself creates and contrives the events which he announced in advance" (Kant in Cascardi 1997, 101), in which case the event is caused rather than foreseen. Cascardi thinks this paradox is evident in the modern civil state in which individuals coalesce into a "mechanical unanimity" (Kant in Cascardi 1997, 102) rather than into a "genuine community of sense." However, Cascardi's account is problematic to the extent he contrasts Arendt to Kant by asserting that she aspires to this "genuine community of sense." See, for instance, Nancy Fraser (1997) who thinks Cascardi reduces Arendt's politics to "normalization."

of political will is sealed by the generalizable interest in an effective government.

In contrast to Kant's abstract administrator, whose heavy-handedness is repeated in Habermas, Arendt turns to Kafka's world-builder as a source of ideas about how change should be conceived on the model of improvement of the world rather than progress. A crucial element of such a conception is a balance between administrators with too much authority and too little authority. In her essay on Kafka, she describes a distinction between changing the laws (Kant), changing the individual (Nietzsche), and changing the world (Kafka). Arendt recounts what she sees as a crucial shift from the 18th to the 19th and into the last century. Her narrative concerns shifting notions of the desirability and nature of change. First, change was conceived on the model of governing a predictable and malleable world. Arendt calls Kant the "philosopher of the French revolution" which "had attempted to govern the world with human laws (EU, 79). Then, according to Arendt, world change came to be seen in terms of the great individual, while the world was accepted as given. The period of the novel's homage to greatness reflected this approach, and Nietzsche figures as one of the writers who satisfied the bourgeois desire for "events and excitements" beyond the everyday, so that Nietzsche's admonitions amount only to seemingly harmless entertainment. Finally, Arendt sees Kafka as one who rejects these views of laws or individuals as the carriers and representatives of change. He has his characters instead represent the "world-builder who can get rid of misconstructions and reconstruct his world" (EU, 80), rather than remaking laws or himself as a substitute for change.

On one hand, Kafka's insistence that the world meet the needs of the individual,

and that it not be conceived in abstract terms, serves as a contrast to Kant's cosmopolitan peace that has little connection to the deliberate actions of individuals, and in which administrators have too much authority. Arendt argues that Kafka "wanted to build up a world in accordance with human needs and human dignities, a world where man's actions are determined by himself and which is ruled by his laws and not by mysterious forces emanating from above or from below" (EU, 80). In one sense, Arendt's description of Kafka's viewpoint paints it as a fierce individuality - one which resists all external determinants. "What makes Kafka appear so modern and at the same time so strange among his contemporaries in the pre-war world is precisely that he refused to submit to any happenings (for instance, he did not want marriage to 'happen' to him as it merely happens to most); he was not fond of the world as it was given to him ..." (EU, 80). But her description is also a more serious questioning of the phenomenon of "belonging" (MDT, 190). They converge in Kafka's insistence that nothing Jewish - except modern versions of Hasidic tales - was of use to him, "into everything else I just drift, and another current of air carries me away again" (Kafka cited in MDT, 194).

On the other hand, Arendt admires Kafka's willingness to take on the role of *fabricator mundi* though this role sometimes threatens to compromise the actor, and this is at the heart of the contrast she finds between Kafka and Nietzsche's supposed refusal of responsibility. She thinks that, in contrast to Nietzsche, Kafka celebrates the authority that comes to some by virtue of their willingness to care for world. From this perspective, Nietzsche demands too little authority for those engaged in improving the world. In contrast to this aspect of Nietzsche's writing, Arendt admires Kant for the "courage to

acquit man from the consequences of his deed, insisting solely on the purity of his motives.” She thinks this “saved [Kant] from losing faith in man and his potential greatness” (HC, 235). And Kant, more so than Nietzsche, is sensitive to the special quality humans have of starting chains of events that may or may not amount to history. Nietzsche, in Arendt’s eyes, appears cowed by such considerations. “The repudiation of willing liberates man from a responsibility that would be unbearable if nothing that was done could be undone” (LMII, 168). Contrary to Nietzsche, Arendt argues in “Collective Responsibility” that accepting such a burden is crucial (Arendt 1987).<sup>17</sup>

However, the driving force for Kafka’s characters, according to Arendt, “is good will, in contrast to the motor of the society with which he is at odds, which is functionality” (EU, 76). In a sense, Kafka’s characters are actors who accept the standards of *homo faber* but only as temporary and experimental. This fundamental mismatch leads to the greatest confusions and frustrations, the subject of much of Kafka’s work. But Kafka’s characters have their own function, which is to make the world safe for good will. For Arendt, this seemingly simple message carries important implications for those trying

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<sup>17</sup> Arendt’s understanding of Nietzsche precludes Honig’s conclusion that Nietzsche seeks a “recovery of responsibility.” However, Arendt’s views on Nietzsche reveal a difficulty with her views of democracy. She sympathizes with Kant’s observation that the present pays for the future (she rejects Kant’s progress and adopts an idiosyncratic reading of his notion of judgement for this reason), but she does not come to terms with Nietzsche’s claims to the inevitability or intractability of such a dilemma. This issue emerges in Arendt’s treatment of Nietzsche’s description of the will. Arendt reads Nietzsche’s reference to the plurality of the will as solely concerned with the will’s powers and nature. But Nietzsche goes on to compare this double-sided but self-absorbed Will to a commonwealth in which one strata feels delight in and possession of the accomplishments of another segment of the population. This amounts to a development of the metaphor that Arendt does not mention and that might shed different light on his concerns. “Hence a philosopher should claim the right to include willing as such within the sphere of morals - morals being understood as the doctrine of the relations of supremacy under which the phenomenon of ‘life’ comes to be” (Nietzsche 1966, sec.19). What Arendt fails to see in Nietzsche’s invocation of the commonwealth metaphor is a concern that an exclusive valuation of action over administration risks a situation in which the actor takes credits for the accomplishments and sacrifices of others.

to figure out what to do with the injustices they find in the world, which is that the demand for rationality and progress is no substitute for the thoughtfulness of a good will. Arendt writes that “Kafka’s stories are such blueprints; they are the product of thinking rather than of mere sense experience” (EU, 76).

This approach of Kafka’s is appealing for Arendt, who thinks that rational truth does not constitute the fabric of the world. She calls Kant the “last great philosopher who was still quite confident of being understood and of being able to dispel misunderstandings” (MDT, 86). In contrast, Kafka complained that “It is difficult to speak the truth, for although there is only one truth, it is alive and therefore has a live and changing face” (MDT, 28). Arendt claims that Kafka understood that the problem with relying on rational truth is that it often captures only partially the reality of the world. According to Arendt, Kafka “knew well enough the superstition of fate which possesses people who live under the perpetual rule of accidents, the inevitable tendency to read a special superhuman meaning into happenings whose rational significance is beyond the knowledge and understanding of the concerned” (OT, 245). Kafka wants to begin the reconstruction process by “destroy[ing] this world by exposing its hideous and hidden structure, by contrasting reality and pretense” (EU, 72).

Kafka is not her final answer on the significance of positive world change, but he provides a contrast with Kant and Nietzsche that she embraces. Arendt refers to Kafka’s parable of He not only to point to the difficulties of an understanding of judgement as arising from an Archimedean point, or to highlight a kind of thinking that acts, but also to explore the tension between reconciling oneself to being a part of the present world with

the danger of being the object of policies to change it to conform to rational dictates.

The task of the mind is to understand what happened, and this understanding, according to Hegel, is man's way of reconciling himself with reality; its actual end is to be at peace with the world. The trouble is that if the mind is unable to bring peace and to induce reconciliation, it finds itself immediately engaged in its own kind of warfare (BPF, 8).

This tension used to be bridged by tradition, but now, according to Arendt, we are all called upon to think about how to improve the world. "The man of good will may be anybody and everybody, perhaps even you and me" (EU, 80).

Discreet administration holds that the improvement desired by a good will can serve as a counterweight to the authority of Kant's laws supported by good reasons and recognizes the authority of those who care for the world that exceeds Nietzsche's individual. It does not necessarily result in greater democratic control, nor are its decisions part of a narrative of progress because they reflect a more tentative improvement, as do all administrative acts. But it does give a different sense, than focusing on discretion, of what it means when administration must step aside or not in favor of political contest that reveals the reality of the world. The centrality of law in Habermas's framework assigns to administrators the authority of upholding the rule of law and thus delivering progress, so political action seems awkward when trying to interfere with implementation. In contrast, Arendt's understanding of administration calls attention to the fact that challenges to the claims of progress inherent in upholding the rule of law are often framed in terms of a lack of improvement.

Her differences with Habermas about the appropriate way to view the results of administrative actions (improvement rather than progress) also point to a second way in



which Arendt provides an alternative to Habermas's account of administrative power. She turns attention to the experimental element of administrative policy in a good government that must work in a context of tacit consent and legitimate dissent. In contrast, Habermas's work suggests that administrative acts cannot be described as "experimental" because faithfulness to majority decision already provides the context and goals of policy. The experimental element of "keeping the world" arises because such efforts must encounter political standards that demand participation, freedom, and dignity. Where Habermas tempers the potentially negative implications of insisting upon faithfulness to democratic decision through an abstract version of separate powers, Arendt offers an account of administrative authority based on the modest claim to "keep the world" as a counterweight to her critique of democratic sovereignty.

This experimental element of government administration can be characterized first through Arendt's distinction between majority decision and majority rule, and second through her insistence that administration works alongside political actors who continue to test the understanding of the world on which policy is based by providing examples that defy or exceed that understanding. First, administration has an experimental element, in Arendt's work, because the policies it implements represent at most majority decisions that cannot demand the consent that is due the Constitution. As Chapter 1 discussed, Arendt insists that *tacit* consent does not imply consent to specific laws or policies, and majority decision does not imply majority rule. In this conclusion, she differs from many theorists who think majority rule can be justified through majority decision, and she introduces an element of experimentation through asserting that implementation is

properly understood as a “common enterprise” whose meaning and direction are not entirely in the administrators’ control.

For example, Jeremy Waldron, in his discussion of legislation as what he calls a “dignified source of law,” provides an account of what is implied by consent to law that is similar to Arendt’s insistence that administrators’ claims must be modest because consent does not amount to agreement. But he differs with Arendt on the implications this holds for the demands administrative policies can make to compliance. Waldron develops a normative account of a “physics of consent” that draws upon Locke’s view of how individuals who are joined in a relationship of consent act together to produce a legitimate majority decision. He writes that “...majority-decision presents itself as a *fair* method of decision-making, and as a natural interpretation of the physical aggregation of forces in the physics of consent” (Waldron 1999, 148). In contrast to “...the theorist of deliberative democracy [who] might infer that there is something wrong with the motivations of the participants when voting is found to be necessary,” Waldron thinks that consent to majority decision making does not require settlement on normative questions in order to carry normative value (Waldron 1999, 153). Rather, he argues that this decision making procedure is not just effective, it is “respectful” because “it does not require any of us to pretend that there is a consensus when there is none, merely because we think that there ought to be - whether because any consensus is better than none, or because the view that strikes *some* of us as right seems so self-evidently so that we cannot imagine how anyone would hold the contrary” (Waldron 1999, 158-159). Waldron’s conception of equal respect is “responsive to proven or acknowledged differences in reason, wisdom, and

experience” and may justify plural voting schemes in place of simple majorities (Waldron 1999, 161).

This view of decision making amidst disagreement also renders the claims of legislators more modest. What are often considered advancements made through legislation, such as ending child labor,

claim authority and respect as law *in* the circumstances of politics, including the circumstances of disagreement as to whether it is even a step in the right direction. Such legislation does not claim authority and respect simply as an intimation of what an ideal society would be like; if it did, those with a different vision or social ideal would simply turn away (Waldron 1999, 156).

Thus, according to Waldron, the appropriate way of describing the content of policy in cases where parties to consent agree that a policy is required but do not agree on a course of action is not to say that each is doing whatever she thinks is important to do about a particular problem, but that it is what the majority has decided upon (Waldron 1999, 158).

At any moment, the public content of policy is not safely encased in a story about progress or an ideal society. The situation of ongoing political contest reflects not just fallibility but diversity (Waldron 1999, 159). For Waldron, this is the wisdom in Arendt’s insistence that action-in-concert is fragile and that “not man but men inhabit the earth” (Waldron 1999, 160).

But Waldron draws this account from a positivist reading of Kant that is very different from Arendt’s approach because it includes the insistence that dissent (refusal to consent) to the implementation of majority decision is equated with abandoning the rule of law (Waldron 1999, 59). “All we can do, politically, for the sake of the integrity of justice is to ensure that force is used to uphold one view and one view only - a view which may

be identified as that of the community by anyone, whatever their substantive opinions on the matter” (Waldron 1999, 39). This account is similar to Habermas’s view of the authority of administrative power in delivering “government by law.”

Arendt, however, in contrast to Waldron and Habermas, distinguishes between reliance upon “majority decision” as a procedure for deciding public questions and “majority rule” as a stance that equates the faithful implementation of majority decisions with upholding the rule of law. Arendt thinks the authority of administrators who “keep the world” comes not from faithfulness to majority will, but from their willingness to implement policy in the context of political standards that challenge the authority of law. She thinks that an appropriately modest view of majority decision requires a renunciation of majority rule and a place for dissent that stops short of secession but will not accept Waldron’s qualification that everyone agrees that implementing any majority decision is better than no decision.<sup>18</sup> In this sense, dissenters can object to majority decisions but also to the appropriateness of collective will-formation on particular questions.

Her distinction between majority decision and majority rule relates to her insistence that implementation, broadly speaking, includes both the acts of administrators and the acts of citizens who choose to either comply or dissent. Arendt argues that the language of “rulers and ruled” and of commanding and obeying

supplanted earlier and ... more accurate notions of the relations between men in the sphere of concerted action. These earlier notions said that every action, accomplished by a plurality of men, can be divided into two stages - the beginning,

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<sup>18</sup> The picture being drawn here of Arendt’s view of dissent as crucial to her understanding of administration has affinities with Flathman’s (1995) notion that accepting administrative expertise and decision making does not do away with a refusal to surrender judgement. See also Warren (1996).

which is initiated by a 'leader,' and the accomplishment, in which many join in order to see through what then becomes a common enterprise (Arendt 1964, 205).<sup>19</sup>

From such a perspective, both obeying and dissenting count as implementation because dissent, directed to changing policy, is itself a part of the accomplishment of the act. Majority rule segregates rulers and ruled so that those who obey are not considered participators in implementation. Good government, in contrast, must rely upon participators who give meaning to policy, so that their active consent becomes more crucial.<sup>20</sup>

In addition to the experimental element of administration evident in Arendt's rejection of majority rule, administration is also experimental because it works alongside political actors who continue to test the understanding of the world on which policy is based by providing examples that defy or exceed that understanding. On this issue, Arendt takes her guidance from Montesquieu rather than Kant, and she thinks that the appropriate response to modest public claims is not to invest administrators with the authority of upholding the rule of law but to invest them with flexibility that reflects appreciation of the complexity and opaqueness of political boundaries and the context of ongoing political judgement.

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<sup>19</sup> Future references to this title are abbreviated PRUD.

<sup>20</sup> Arendt contrasts this understanding of consent that implies the possibility of an active role in political life to past understandings of consent as consent to rule (CR, 85). She argues that "consent and the right to dissent" are the Montesquieuan "principles of action" in the American system and inform the right and practice of association (CR, 94). "Consent as it is implied in the right to dissent - the spirit of American law and the quintessence of American government - spells out and articulates the tacit consent given in exchange for the community's tacit welcome of new arrivals, of the inner immigration through which it constantly renews itself" (CR, 88).

Sheldon Wolin's discussion of the American constitutional debates in "Montesquieu and Publius" presents an interpretation of Montesquieu that is very similar to Arendt's use of his work. Wolin argues that Montesquieu's approach manifests a tension between identifying the laws that govern human interaction and believing that they determine human acts, and shows how this tension is unsuccessfully subverted in the thought of Hamilton and Madison under the guise of Publius.

...Montesquieu dissociated constitutionalism from a science of politics and, at bottom, saw them as deeply antagonistic to each other. Publius, however, saw the two as fruitfully connected and even claimed that a science of politics would save modern constitutionalism by curing republicanism of its democratic maladies (Wolin 1989, 102).

Montesquieu used the language of science in describing mankind as subject to law and in prescribing a study of the modes of government, but he had a very different understanding of "what constituted intelligibility" (Wolin 1989, 102) based on a view of humans as "transgressive, changeable, and forgetful, ... the subject of a variety of laws" (Wolin 1989, 105). Thus, intelligibility does not call for a unitary description that brings all law together in one scheme. Rather, an intelligible description recognizes the different forms reason can take and does not call the juxtaposition of irreconcilable laws "irrational," but instead sees this as "the results of accommodations worked out by unequal powers for concrete circumstances and amidst competing 'laws'" (Wolin 1989, 106).

Sharon Krause, in a reappraisal of Montesquieu's views toward the English constitution, describes the tension between political equality and the diverse laws, forms, and groups that, in Montesquieu's view, successfully sustain separate powers.

Montesquieu is no civic republican, in the contemporary sense of the term. He

does not favor the identification of the citizen with the political collective as a whole so much as individuals' associations with the partial, intermediary bodies that stand between the populace and the sovereign power (whether monarch or parliament). The presence of such associations protects individual liberties by supporting the institutional division of power and individual resistance to encroaching power (Krause 2000, 262).

Wolin agrees that, for Montesquieu, a "moderated government" means one that can adjust itself to the myriad forms found outside of its immediate reach, and "...constitutionalism involved more than the limitations upon power and its discretionary exercise" (Wolin 1989, 107). Instead, discretion, in the sense of permitting and knowing when to permit exceptions, forms a crucial part of a constitutional government. What distinguishes a despot, for Montesquieu, is his unwillingness to grant exceptions, that in modern guise is analogous to an "impersonal order governed by rational laws" (Wolin 1989, 109).

During the constitutional debates in the U.S., Wolin points out, the issue of the proper place of local interests and exceptions to general or national law emerged as attention turned to the appropriate understanding of Montesquieu's warnings about governing a large territory. Anti-federalists argued that only a despot could rule such a large area because the law that applied to it would have to be very general, and would have to smooth over many exceptions that might have been justified. Federalists argued that a strong national government would indeed have to reduce instances of exception, but that this would be more rational because it allows consideration of a national interest that is not visible on a local level (Wolin 1989, 113). Wolin argues that Madison reflects Montesquieu's concerns through his focus on restricting government power and his

celebration of the conflicting factions that would surely offset one another over such a large area. But Madison's failure to address how power might arise and might generate policies to promote justice itself, resolves into a Hamiltonian celebration of a strong central government that is benign because majority parties have realized that they must protect all parties to ensure their own security (Wolin 1989, 117). Wolin thinks that the success of Publius meant that "the possibility of an American version of Montesquieu's constitutionalism of diverse laws, 'intermediary groups,' and intricate accommodations went unexplored" (Wolin 1989, 117).

For Wolin the result is an administrative state in which politics is equated with limiting the dangerous administrative discretion that comes from granting exceptions to general rules (Wolin 1989, 178). From this perspective, the problem that must be addressed is not designing a system that can decide what exceptions must be granted (or accommodations must be made) in order to legitimate political power, but the inappropriateness of thinking that general laws can substitute for "politic judgement" (Wolin 1989, 106).

Like Wolin, Arendt thinks that a focus on controlling administrative discretion, like that found in Habermas's work, falsely leads us to believe that we are giving ourselves freedom, when we may simply be institutionalizing a process of selecting rigid general laws. Instead, under discreet administration, laws are understood as experimental statements, meant as the starting point for exploring specific and local implications. When representative government accommodates such specificity, it does so by writing justified exceptions into rules. Arendt's opinion holders insist that exceptions cannot be justified or



written before implementation, but only as the specific implications of policy emerge in implementation.

In this way, implementation is itself considered a continuation of political contest. While citizens joined in acts of civil disobedience are surely the most powerful of what she calls “voluntary associations,” they are only the most visible examples of an extensive and ongoing process of dissent that is a crucial ingredient in all associations to the extent they want to change existing policy or law, for any reason. Thus, in contrast to much writing on Arendt, political contest and judgement are not banished from administrative activities. Rather, they run alongside, always ready to step in and challenge administrative policies (and the democratically-derived decisions that authorize them) that stretch their limits and claim to deliver progress rather than improvement. What is instructive about Arendt is her refusal to recognize the choice between expertise and democracy, and to insist that the two do not exist in a relationship of “one for the other.”

But Arendt goes much farther than Wolin in asserting the possibility that the world we have created raises administrative issues that call for some measure of centralized administration alongside the political life often found in associational activity. And though she seems to resemble Habermas in this respect, she sees this as a counterpart and challenge to rather than as a completion or facilitation of political life. From her perspective, the problem is not that we do things that require centralization, like having a welfare state or an international economy that generates cross-border pollution, but that we do them in ways that do not acknowledge the tentative claims on which such centralization rests. Habermas asserts that administrators must have the authority that

arises from appropriate reasoning processes, and to address problems in this way the results of policy must not be evaluated using anything external to the original decision. In contrast, discreet administrators recognize that they work in the context of incomplete or irreconcilable judgements, refusals to surrender or complete judgement, and the prerogative to “wait and see” so that the “fait accompli” that the policy becomes serves as the focal point around which political boundaries, examples that offer themselves to judgement, and knowledge of specific implications emerge. Often in the absence of such judgements only administrative standards are appropriate and policy design reflects the absence of consensus, decision, and even opinion.<sup>21</sup>

One might also describe this approach in terms of knowing through doing, so that one begins to understand what to do through the reality that is shown in the process of implementing policies demanded by participants. Knowing that arises from doing amounts only to a limited understanding of the context in which action takes place, and the meaning that will be attached to the action by participants. In Arendt’s work, the administrative standards that motivate and give direction to *homo faber* strain toward centralization, but it is a kind of experimental centralization that recognizes that government works alongside political actors who continue to test the understanding of the world on which policy is based by providing examples that defy or exceed expectations.

This kind of knowing is not the enlightenment associated with the notion of

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<sup>21</sup> In a sense, Arendt agrees with claims that it is important that administrative capacity and capabilities must keep up with the complexity of problems so that policy choices are available, and this includes knowledge of how centralized policies can work. But she also thinks that such capacities are limited by the political context that exceeds methodical knowledge. See, for instance, Weir (1988).

“enlightened self-interest” in which participants find a way of reconciling private interests by discovering a common interest (Arendt 1977d, 105;<sup>22</sup> CR, 175; OT, 145). This disregards what she thinks is an inevitable clash of self-interests that are often irreconcilable. “If we understand ‘enlightened *self*-interest’ as the ‘interest in the common good,’ I would argue that such a thing does not exist” (PRPI, 105). Rather, Arendt argues that “To recognize and embrace the common good requires not enlightened self-interest but *impartiality*” that reflects solidarity (PRPI, 105). From such a perspective,

common interest would then be ‘the grandeur of man’, or ‘the honour of the human race’, or the dignity of man. But this solidarity, though it may be aroused by suffering, is not guided by it, and it comprehends the strong and the rich no less than the weak and the poor; compared with the sentiment of pity, it may appear cold and abstract... (OR, 88).

Solidarity entails the risk of extending the world, that which lies between, from the “oppressed” to the “non-oppressed.”<sup>23</sup> Canovan explains that, for Arendt, solidarity sees the “oppressed and exploited...not as objects of emotion but as equal partakers in human dignity” (Canovan 1992, 171). This understanding arose from Arendt’s experience as a member of a “persecuted and suffering minority, grateful for authentic *compassion* but infuriated by the patronage of *pity*, and craving the respect *solidarity* implies” (Canovan 1992, 171).

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<sup>22</sup> Future references to this title are abbreviated PRPI.

<sup>23</sup>“It is out of pity that men are ‘attracted toward *les hommes faibles*,’ but it is out of solidarity that they establish deliberately and, as it were, dispassionately a community of interest with the oppressed and exploited” (OR, 88). The problem with this formulation is that it requires the continual characterization of one group as “oppressed” and another as somehow “nonoppressed.” This last term is one that Arendt leaves unsaid in the above quote. While I do not mean to deny the importance of recognizing and distinguishing oppressive relations, the terms seem to favor those who are “nonoppressed” by granting them the role of guarding the gateway into even the most preliminary explorations of oppression.

Because the notion of a self-interest that is sufficiently broad to become a common interest is problematic, according to Arendt, it does not inform the centralization employed by good government. Administrators do not undertake the task posed by Suzanne Jacobitti, through Tocqueville, of how "to encourage individuals to conceive of their interests so as to include an appreciation of the interests of the community" (Jacobitti 1991, 602). In her discussion of the conflict between the tenant and the landlord, Arendt argues that asserting their shared interest in the preservation of the building does not amount to an appropriate argument for policy content. Such an approach, in which interest clashes are solved by progressively melding interests, negates the need for political contest so that only administrative experts are required. Nor does good government celebrate autonomous opinion to the point of calling for decentralization and fragmentation that will avoid other opinions. Short of a Hausmannian remaking that disregards the present, Arendt asserts that modern society appears to require centralization. "The bigger a country becomes in terms of population, of objects, and of possessions, the greater will be the need for administration and with it the anonymous power of the administrators" (CR, 180).

Benhabib claims that Arendt's rejection of "enlightened self-interest" reflects an insistence that political contest "always involves a claim to the generalizability of the demands, needs, and interests for which one is fighting" (Benhabib 1996, 144-145). She argues that what Arendt objects to is the economic framing of the claim that interests can be reconciled. Instead, according to Benhabib, "engaging in politics does not mean abandoning economic or social issues; it means fighting for them in the name of principles,

interests, values that have a generalizable basis, and that concern us as members of a collectivity” (Benhabib 1996, 145).

But the notion of a generalizable interest carries temporal implications with which Arendt does not agree. This can be seen in the way Habermas characterizes the unfolding of meaning that is enabled through recourse to a generalizable interest. In his recent essay, “Constitutional Democracy,” in which he further explains his understanding of the will-formation process, he writes that “...this internal connection between will and reason can develop only in the dimension of time - as a self-correcting historical process” (Habermas 2001b, 768).<sup>24</sup> For instance, he argues that constitutionalism has incorporated a protection for the enforcement of minority rights in terms of both a progressively improving decision making process and a virtually irreversible expansion of rights. Thinking of administration solely in terms of limiting discretion defines the boundaries of particular issues that administration must complete for legitimacy. Political contest, if it persists in the form of dissent, is properly seen as raising new issues and reintroducing a new will-formation process around different questions rather than continuing old ones. And progress on this level can only be seen over time.

Bonnie Honig helps us to see two ways in which Arendt does not reach the same conclusion about what it means for meaning to unfold in the inception and implementation of law and policy. First, Honig invokes Arendt to argue that Habermas’s prioritization of law over participation overlooks the good of the present. According to Arendt,

the law of progress holds that everything now must be better than what was

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<sup>24</sup> Future references to this title are abbreviated CD.

before. Don't you see, if you want something better, and better, and better, you lose the good. The good is no longer even being measured (Arendt cited in Honig 2001, 797).

Understanding and negotiating the implications of administrative policy for present problems is stifled when decision marks the transition to administrative reasoning. In this context, Honig discusses Carens's invocation of the notwithstanding clause as a time-limited, institutionalized right of exception. The provision Carens discusses serves to extend the period of time in which the meaning of "progress" that will be solidified in programs is definitively settled.<sup>25</sup> Honig thinks that a constitutional mechanism such as this, while not perfect, helps to respond to and accommodate demands for an institutional place for dissent. In this way, one might say, political standards are welcomed back in after *homo faber* has done her work and administration must continually take its bearings from present judgements about what would bring improvement.

Second, Honig thinks Habermas limits the status of participation relative to implementing law because he is confident about progress at the level of improving rational decision making process, and confident that this translates into better policies with lasting effects. She calls this attitude "triumphalism" that "leaves us unprepared for the reemergence of old claims" (Honig 2001, 798). Honig suggests that his approach stands in contrast to Wolin's solution to this issue. The difficulty with Wolin's insistence that we

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<sup>25</sup> Carens argues that the reality of state sovereignty is undermined by the overlapping sovereignties of different entities in the federalist system. Rather, for Carens "sovereignty, like property, is best conceived as a bundle of rights that can be parceled out in many different ways" (Carens 2000, 164). This suggestion is reflective of what James Tully calls the "ancient norm of continuation" by which accepting external administrative authority on a particular issue does not amount to accepting the sovereignty of that authority on all issues, but that prior governing arrangements continue (Tully 1995, 124-127). This constitutional tradition, according to Tully, is obscured but not extinguished by the overwhelming focus on the four primary traditions of liberalism, nationalism, and communitarianism.

see democracy as “*a*constitutional” is that he identifies democracy exclusively with power in concert with others, and fails to see the need for a balance between democracy as “anarchic, ... a form of power” and democracy as a “form of rule” (Honig 2001, 799). She thinks that Habermas is sensitive to the fact that democracy cannot be consensus (in contrast to some critiques of his work). And in this respect, Habermas’s difference with Wolin is similar to Arendt’s difference with Wolin that is reflected in her begrudging acceptance of some measure of centralization. But, according to Honig, Habermas mistakenly believes that “government by law,” because it measures progress in terms of procedures for will-formation, can both avoid reifying the founding constitutional act and retain a sense of moral direction.

Honig thinks that such an approach overlooks the contingency of advances made through constitutional battles, seeing them as almost inevitable. And, while she praises Habermas for trying to reach a balance between Wolin’s “*a-constitutional*” democracy and democracy as a form of rule, she thinks he goes about it in the wrong way by relegating democracy to the periphery, and placing law in the center, so that constitutional rights have priority over participative rights. Habermas’s approach to administrative power - by successfully implementing law, it translates communicative power into policy - puts law in the center so that administrators have the authority to exclude participation that would revise or deflect the political decisions whose generation is the heart of Habermas’s system. In Arendt’s version of administration as a part of good government, in contrast, the kind of authority that comes from keeping the world rather than from translating decisions, relies upon participation that will test and update its understanding of

the changing world. From Arendt's perspective, Habermas's version of the generalizable interest cannot shake the non-democratic implication that it would be in one's self-interest if only a different set of deliberators were in place.<sup>26</sup>

Thus, the contrast Arendt provides to Habermas's generalizable interest points to an element of participatory and experimental administration that is precluded by Habermas's limitation of administrators to interpreting majority will. Though William Rehg, in the preface to Between Facts and Norms, argues that Habermas calls for a "more participatory form of administration" (Rehg 1996, xxxiii), the participation Habermas supports amounts to helping to complete the political process around particular issues. Arendt's understanding of participation, however, goes beyond the ability to influence the interpretation of majority will to the more important ability to revise or deflect public decisions through bringing opinions into public during implementation.

But what should be said of experimentalism when the integrity or meaning of government policy is undermined by flexibility or revisability, in the way that implementing civil rights policies makes little sense if they are negotiable or if one can choose to opt out of them? Habermas's approach generates the familiar question: Should dissent affect the implementation of such policies? Habermas's hierarchy of reasons holds that a reconsideration of decision is only a strategic effort to defer solutions, so he understands administration's role in the political process as the complete implementation of particular decisions. Because Arendt does not understand implementation in these terms her public

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<sup>26</sup> Strong and Sposito make a similar point in "Habermas' Significant Other." They explain that the "we of universalizability is thus dependent on that availability of the nonuniversal - not just the particular, but that which cannot be comprehended in the terms of that world." (Strong and Sposito 1995, 280-281)



stances are sometimes jarring, as in her comments on school integration. The following paragraphs will consider these comments in light of her understanding of the discreet character of public administration.

The tension between law and democracy that emerged around resistance to the implementation of court ordered school integration provides a context for considering their different views of administration. Arendt's view of good government is a crucial piece in the stance she took on Little Rock that has not been sufficiently appreciated, and it arises from her understanding of the way in which judgements should be made on the question. In her controversial approach to the issue, Arendt thinks that government actions designed to address educational goals are administrative and, as such, should be seen alongside political efforts that try to change opinion through example. And while Arendt's view of what counts as discreet - voluntary integration outside the public school system - is objectionable, what is insightful is the way in which she calls attention to the place of administration alongside political life and in the context of ongoing political contest, rather than the outcome of political contest over principles.

Kirstie McClure discusses the distinctiveness of Arendt's view of these political efforts. She argues that Little Rock demonstrates not Arendt's different judgements or even methods but her embrace of a different "decorum" governing public debate. This difference, according to McClure, became "noticeable" when it triggered visceral reactions on the part of her critics who took "her reflections as the expression of an erroneous and unacceptable opinion that they were being urged to share...", an opinion that they understood to be fixed in place (McClure 1997, 65). McClure thinks "the political

differences between Arendt and her critics run quite beyond the questions of federal policy that occasioned their initial articulation” (McClure 1997, 67), an important point because McClure thinks that her views on the specific policy no longer resonate. Political judgement, for Arendt’s critics, was a matter of applying rules and principles to particular cases. In the case of Little Rock this entailed the application of the rule of equality, either as a universal moral principle or as a basic constitutional value. Politics, so understood, is a department of morality and law, while ‘society’ is the matter to be organized in accordance with the proper principles (McClure 1997, 77-78).

However, in contrast to the view of Arendt’s practice of judgement as either phronesis or application of principle, McClure focuses on the importance of the place of examples in “a world in which the substantive claims of custom and tradition have been divested of authority” (McClure 1997, 68). She writes that “By contrast, the properties of judgement underlying Arendt’s reportage - proprieties partially glimpsed in her reply to her critics - foreground attentiveness to the particularity of the particulars of Little Rock, to their status, that is, as examples” (McClure 1997, 66). Assigning a prominent place to examples refuses the temptation to substitute “logicality” for the hard task of understanding and for the even more difficult task of identifying a path to be taken with others.

And these distinctive views of what political contest carried out through public debate consists of - her “habits of thought” - also emerge in her insistence that coming to an opinion about the appropriateness of policy is not a question of applying the right principle but of experimenting to find the policy that can support efforts at opinion change.

For Arendt's critics, the role of administrators is to implement the correct or correctly-decided applications of principle with as little discretion as possible. Arendt, however, thinks that administrative acts that claim sovereignty can change policy but not necessarily opinion, and when they reach beyond their appropriate boundaries they threaten to damage ongoing efforts to change opinions.

Derrick Bell discusses the kinds of confusion that can arise when administrative policy is considered the outcome of political battles to choose correct principles that will then be applied. In "*Brown V. Board of Education* and the Interest Convergence Dilemma," Bell tries to "explain why school desegregation has in large part failed and what can be done to bring about change" by searching for principles governing *Brown v Board of Education* and the subsequent rulings that moved beyond fighting *de jure* segregation to require action against *de facto* segregation. He argues that both neutral and positive principles are at work simultaneously, and factors such as the political and social environment help determine which principle will be dominant at any particular time. He agrees with Charles Black's identification of "racial equality" as the neutral principle that, in fact, underlies *Brown*: "The equal protection clause clearly bars racial segregation because segregation harms blacks and benefits whites in ways too numerous and obvious to require citation." And so, if equality cannot be achieved without displeasing whites then "something called the freedom of the whites must be impaired." (Bell 1995, 22)

But Bell thinks that the status of Black's principle of equality is undermined by the fact that "whites simply cannot envision the personal responsibility and the potential sacrifice" it demands. Because of this Bell thinks that Herbert Weschler, who described

*Brown*'s underlying principle as association rights, put his finger on something important, which is that the principle at work in the positivist sphere or in reality and fact will have the same result as if all parties to the issue of integrating education agreed to *Brown* based on the equal right of association. Because whites are in the majority, their right not to associate with blacks will control policy. Instead, Bell thinks that the principle of 'interest convergence' - "the interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites" - though not overtly chosen by anyone, better explains the outcome (Bell 1995, 22). Bell argues that the situation in 1954 was one in which the interests of whites and blacks would both be served by an end to *de jure* segregation,<sup>27</sup> supporting the claims of blacks who had been attacking the validity of these policies for 100 years. When in 1979 Bell wrote his essay, he claimed that this convergence was crumbling, leading to arguments in the supreme court on behalf of 'local autonomy as a vital national tradition in education.' As the old convergence of interests topples, Bell suggests that a focus on "effective education" might found a new convergence. And because busing may be inferior he worries about "resegregation within desegregated schools, loss of black faculty, racial harassment"), such a refocusing might include model all-black schools. So, for Bell, restricting the view of the appropriate job of administrators to implementing a principle or reason leaves them unequipped to address educational needs.

Arendt arrives at a similar conclusion about the appropriateness of focusing on

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<sup>27</sup> Shared concern for international reputation, the desire to avoid an unfavorable comparison with the enemy USSR, and industrialization in the south all pressed toward an end to forced segregation.

educational achievement, and, while she does not arrive at this point by searching for the correct application of principle, she also does not follow Bell in reaching this conclusion by trying to find principles that will describe behavior. Instead, Arendt insists upon a policy that allows diverse minds to meet *through administration*. In this sense, while Arendt constructs the issue around the lack of consent of white parents to such a “major change” in their children’s lives, she thinks that policy specifically designed to further educational goals calls attention to the commonality of the world and provides a context for ongoing political contest. In this choice of policy, political and administrative are neither separate realms nor different moments in the same process, but intertwined. She explains that “To be sure, there, too, I would use the children in what is essentially a political battle, but at least I would have made sure that the children in school are all there with the consent and the help of their parents...”(Arendt 1959b, 180).<sup>28</sup>

On one hand, this choice does not reflect an application of the principle of equality described by Justice Black. She claims that “forced integration” is not the answer partly because the enforcement in Little Rock moved beyond segregation by law to attack customary segregation, and, following Montesquieu, she thinks that customs are more appropriately changed through changing opinions rather than changing law. “Not discrimination and social segregation, in whatever forms, but racial legislation constitutes the perpetuation of the original crime in this country’s history” (RC, 181).

On the other hand, her preferred policy also does not reflect application of Weschler’s principle of association. It is important to note that Arendt does not support

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<sup>28</sup> Future references to this title are abbreviated RC.

the white parents without restrictions and advocates a critical stance toward their insistence upon segregation if it is driven by interests. In a later discussion of Calhoun's claim to speak for an excluded minority in Disquisition on Government she suspects that his claim is based on a partial interest of whites in free labor rather than a shared opinion (and concern for the world), and the shared public appropriately takes this into account when judging the "quality of opinion" (CR, 76). Deciding between opinions about public policy is helped by "going visiting"<sup>29</sup> and making judgements about whether one agrees with opinions. The principle of association, for Arendt, does not negate the demand for such judgements.

This assertion that Arendt does not give priority to association rights or plurality as such contrasts with James Bohman's claim that, for Arendt, plurality, the dilemma posed by association rights, trumps equality and social demands, resulting in a regrettable but inevitable moral loss. He argues that the Little Rock episode revolves around a tension between social equality and political plurality that Arendt resolves in favor of plurality. For Arendt, according to Bohman, "no matter how noble its moral end, force should not be used at the cost of the plurality that is the condition of political life" (Bohman 1996, 58).

In his view, the value of Arendt's Little Rock exchange is in turning attention to the moral costs that arise from giving priority to plurality.

To the extent that desegregation is forced upon citizens, Arendt believes that it is not a diversity-promoting public compromise at all. Indeed, the use of force itself will provoke only resistance to the goals of the policy. Arendt is certainly

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<sup>29</sup> Disch (1997).

historically correct, to the extent that this resistance continues today in almost all American cities with a virtual and de facto boycott of public schools by whites. The policy has not achieved the public goals that it set for itself, and these goals could have been reached only by mutual cooperation and the search for common ground.

But the moralist in us all is as outraged as Arendt's liberal commentators and rejects just this implication of radical pluralism (Bohman 1996, 70).

Bohman thinks that, while Arendt insightfully points to dilemmas that have since been explored by many scholars of multiculturalism, one can still identify characteristics of compromises that retain a moral value. Such compromises "take into account persistent inequalities and promote the ideals of common citizenship" (Bohman 1996, 74). As examples, Bohman considers the special rights native americans exercise through the reservation system in Canada and the United States, and voting reforms that move toward cumulative rather than winner-take-all results (Bohman 1996, 71). But Bohman thinks that Arendt does not attempt to identify such a compromise in the case of education integration. Instead, he claims, Arendt denies common citizenship by arguing "against the use of Supreme Court powers and federal troops to settle an issue about which no compromise had been reached" (Bohman 1996, 75). She is, according to Bohman, willing to accept the moral costs associated with insisting that no voluntary compromise on such questions means that no coercive policy should be applied.

But with her assertion that consent does not extend to specific policies, she argues that one denies something very important if one thinks federal troops "settle" the issue, namely that the implementation of majority decisions is itself properly considered a continuation of political contest. To the extent policies deny this status of administration as an element of ongoing contest, they dampen the good will to provide examples that

stress the common world, the real source of change in Arendt's estimation. She thinks that the use of federal troops "impresses one with a sense of futility and needless embitterment as though all parties concerned knew very well that nothing was being achieved under the pretext that something was being done" (RC, 181). However, she says that federal troops would be appropriate if the majority interfered with the attempt to set an example by integrating a school outside the system. The difference between these two cases, one in which federal troops are appropriate and one in which they are not, is not only, as Bohman asserts, that Arendt thinks one should not use federal troops when this would damage the precious plurality that sustains the union. Arendt is also arguing about the appropriate status of administrative standards in the context of ongoing processes of opinion change. What is important about the imaginary integrationist parents, for Arendt, is that they recognize the shared world through attempts to set examples. And this points to her insistence that it is often through example that one learns crucial aspects of reality that are not captured through representative mechanisms nor through administrative policy.

What is problematic in her account, however, is that she fails to recognize that the "white parents" willing to open an integrated school were largely imaginary, and that government played an important role in breaking the stranglehold of white supremacy on the political establishment so that the long term work of opinion exchange and change could proceed. To see this problem in her work, it is necessary to consider administrative policy in this case to be an instance of the "changing of circumstance" that Arendt contrasts to "progress."



The modest goals of good government - to keep a common world - include setting a context in which those aspects of the world that are in common become a focus of attention, and the fact that these aspects were lost on many participants did not become visible until after federal troops intervened. One could argue that Arendt, herself, learned from the political developments that were in part brought about by federal intervention. In her early essay on Little Rock one senses that Arendt suspected that she did not really understand the situation and was hoping for an example that might make things clearer for her, an example that she thought might not be forthcoming because of the insertion of federal troops. She is moved by the willingness of white parents in Virginia to give up public education rather than integrate it and she thinks the appropriate response is the voluntary establishment of integrated schools to bring about a change in social custom. But in her later work, she focuses on the barriers to integration that lie in the “*tacit* exclusion” of African-Americans from the original consent, an exclusion that damages assertions that African-Americans, too, claim this culture of segregation for their own (CR, 91). Writing about the origins of segregation, she notes that “even those who pleaded eventual emancipation thought in terms of segregation of Negroes or, preferably, of deportation” (CR, 90). With such a history, she notes, it is not surprising that efforts to reach out to African-Americans “are not trusted” (CR, 91). In the absence of consent to the Constitution, including a sense that it matters whether one consents, Arendt argues, consent and dissent to specific laws or policies become meaningless. In this regard, the question whether white parents consented to school integration becomes problematic when a similar question is meaningless when asked of black parents.

One can point to two kinds of developments that occurred after intervention and support her later focus on consent and dissent. First, in places like Prince Edward County, Virginia, the vow to forego public education rather than submit to integration resulted in closing all public schools, establishing private schools for whites only, and leaving blacks with no schooling for several years. This demonstrated the futility of black demands for equal educational resources and provided an example by which to judge the opinions of those adamantly in favor of segregation. Second, the fact that in most other counties throughout the South *Brown* was implemented with less controversy revealed that limited change in the culture had occurred but it was only made visible by federal intervention. Together the two developments show that federal intervention resulted in the kind of revelatory exchange Arendt thinks is so important. Federal policy on school integration targeted not just the persistence of prejudice that impeded the implementation of the 14th and 15th amendments, but also governance structures that obscured appreciation of the history and reality of segregation.

From this perspective, Arendt's suggestion that government focus only on educational improvement, leaving integration to be dealt with by political actors, fails to appreciate the intertwining of administrative and political questions on the issue. Instead, as Lassiter and Lewis show, to the extent the debate over integration focused only on education it was revelatory both for what it included and what it left out. What it included was a broad vocalization of support for public education, even at the expense of segregation. But what the debate left out was discussion of "the broader issue of educational equality for all" (Lassiter and Lewis 1998, 103). In many cases, considering

integration a political question led many to avoid it entirely. Lassiter and Lewis note that, though many parents began to see segregated schooling as wrong, they “considered the debate over segregation versus integration to be a political question” and beyond the scope of their purely practical efforts to preserve public education (Lassiter and Lewis 1998, 102). This permitted a kind of crisis management strategy that undermined implementation and contributed to the ongoing controversies regarding segregation in later decades.

Although white moderates remained committed to public educational reform during the decade, they rarely associated their goal of improved public schools with the ethical principle of achieving racial equality in integrated classrooms. In the early 1970's the moderate consensus for supporting public education at all costs was stretched to the limit after the courts ordered busing in cities such as Norfolk and Richmond, as many of the same type of urban and suburban middle-class whites who rallied against massive resistance a decade before refused to accept the extension of full-scale integration into their residentially segregated neighborhood schools (Lassiter and Lewis 1998, 19-20).

In such cases, those trying to avoid political controversy took refuge in what they considered to be merely administrative issues.

So, on one hand, Arendt rightfully argues that federal intervention, with its focus on sovereignty and the duty to follow majority rule, could not possibly achieve the political gains delivered through the slow chipping away at racist opinions, and in this way she celebrates the crucial importance of decades of political work by African-Americans since the Civil War to change a racist culture. She thinks that, though representative government passed laws designed to ensure equality of access to the political system and public facilities, the end to Jim Crow came about only after extra-legal action and demonstrations persuaded those in South to change their minds (CR, 80). And she argues

that the Supreme Court did not begin to enforce civil rights legislation until civil disobedients had succeeded in changing public opinion (CR, 81, 202). In this sense, “law can indeed stabilize and legalize change once it has occurred, but the change itself is always the result of extra-legal action” (CR, 80). She argues that implementing integration is not just a question of identifying good reasons and the policies that will produce the correct reactions. This view leads one to try to fashion political boundaries so that the correct majority produces the correct policy decision. And integration cannot be handled in a scientific fashion because reactions can not be taken for granted.

But, on the other hand, Arendt’s early essay failed to appreciate that federal intervention, even though it claimed to deliver progress through implementing a moral stance about equality of access to education, succeeded in the rather reduced goal of displacing stifling regimes like the Byrd Organization in Virginia. As a result, *fait accompli* in the sense of “nothing but *fait accompli*,” became a starting point for opinion and example. The success of this move was shown by the fact that the choice between public education and segregation seemed absurd to most southerners. From this perspective, the continuation of conflict over the question reflects not the failure of implementation, as Habermas’s approach might suggest, but continued political exchange.

For Habermas, administration in public signifies the regulation of generalizable interests through legitimate law that has been put to the test in the anonymous public sphere, a triumph over strategic action where it threatens to inform law, and a tension between lifeworld and an administrative system that integrates the two through implementing law. The relationship between administration and politics is best

characterized in terms of limiting the discretion of administrators who deliver validity through translating decisions into policy. With his claim that “only the administrative system itself can ‘act,’” Habermas designates administration as the only source of legitimate action, the final moment in a political process of deciding and implementing. But this risks overlooking the diversity of the ways things actually happen or “get done” in the world - bargains, consensus, planning, accidents, misunderstandings, covert action, coercion, brute force, charisma, unthinking taskmastering - and the way that all of them work on the same world and produce the material on which future work must be done.

For Arendt, administration in public signifies the stubbornness that characterizes conflicts over the objective world of things, and the tension between the reality of life and the reality of the world. Her approach suggests a picture of administration as discreet in the face of the public’s reservation of judgement throughout implementation. This requires appropriately delimiting administrative goals in light of the political life that moves alongside the upkeep of the world. So, discreet administration represents a willingness to build a world that will be ready for political standards by insisting upon the value, not of plurality as such, but of example that sometimes takes the form of dissent. The type of judgement enabled by the exchange of opinions about implementation is very difficult to incorporate into the mechanism of government, so dissent is a precious and fragile link to the reality of the world. For Arendt, it matters what all political actors do, and what their world looks like, even those who find themselves at odds with deliberative democratic decisions.

In a sense, her claim of the distinction between political and administrative

elements of good government can also be characterized in terms of the different types of stories they tell about human affairs.<sup>30</sup> The distinctive importance of both political life and administrative goals can be captured in different stories about human life, signaling the importance of tracking both the relevance of and right to political participation, and the upkeep of the world. They do not necessarily proceed together, the value of one does not arise from delivering the other, and progress is an unsuitable characterization of their relationship, though one sometimes provides indications that the other is failing. And the political story is not just retelling of great events - unlike Thucydides (BPF, 166) - not just a list of rights but who fought for them, how, and why, what does this show us about the world the fabricators (including ourselves) have created?

The next chapter will turn to a more explicit consideration of the institutional implications of this contrast: what does it tell us about the profession of public administration and about present governmental arrangements?

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<sup>30</sup> Disch has pointed to the crucial importance of storytelling as a part of judgement (Disch, 1993).

## CHAPTER 5 - ADMINISTRATIVE POWER IN PRACTICE

Since Woodrow Wilson's claim in "Politics and Administration" that the administrative functions of government predate more modern questions about the appropriate control of such functions by democratic structures, much thinking about administration has centered on balancing administrative goals that have some independent status with political demands for self-government. The issue of discretion has dominated such discussions, with the assumption that the path to an appropriate balance is democratically derived law that authorizes and delimits the discretion of administrators. But as Chapter 4 showed, the set of issues associated with discretion is itself a limited way of characterizing the relationship between politics and administration.

This chapter will look more closely at two broad contexts in which the difficulty of casting the politics/administration relationship solely in terms of discretion makes itself felt: the debate over the non-delegation doctrine and the status of the "fait accompli." Section 1 considers arguments on both sides of the debate, and explores the theoretical and professional tensions generated by Habermas's approach. Rather than asking which branch - executive or legislative - best matches political will to administrative ability (making will more effective), or how to bring administrative ability under the control of political will (an important but misleading question because administrative ability exceeds meaning in modernity<sup>1</sup>), the more appropriate question is to ask how those charged with "good governance" might make room for action. Section 2 considers the issues posed by

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<sup>1</sup> For example, Arendt considers, in The Human Condition, how scientists are able to achieve feats, like creating an atomic bomb, whose implications exceed the language used to describe them.

the use of “*fait accompli*” in public life. Such acts, characterized by obscurity and irreversibility, are often associated with the machinations of administrators. But if decision does not mark the distinction between the political and the administrative - and the justification for administrative coercion - then the significance of “*fait accompli*” must be reconsidered. From the perspective of discreet administration, this section will argue, administrative acts can be recognized as *nothing but “fait accompli,”* and thus reducing their status can enhance the possibility that implementation can be subject to political standards.

## **SECTION 1: ADMINISTRATIVE DISCRETION AND THE NON-DELEGATION DOCTRINE**

Brian Cook, in *Bureaucracy and Self-Government*, claims that the “central political ‘problem’ public administration poses for a liberal democratic constitutional regime is that administration is the manifestation of the ability of the public - the state if one prefers - to reach where the law cannot quite grasp and to shape the aims of the polity and the character of the citizenry beyond the expressed intent of the law” (Cook, 175). Arguably, it is this worry about the potential of administration to exceed the grasp of the law that motivates Habermas’s insistence that administrative decisions - those that follow sovereign political will-formation - draw only upon instrumental rationality, and that they refrain from consideration or reconsideration of normative issues. Often, this view of administration as properly limited in its discretion by the authority of public decision making is cited in arguments for a reinvigoration of the non-delegation doctrine, even if in



limited form. However, the essence of Habermas's position informs both those who favor severe restrictions on the power of agency decision making, and many of those who argue for wide delegations of power to the executive branch. In the latter case, it becomes an argument that administrators are justified if they refuse, avoid, or ignore normative issues.<sup>2</sup>

This section will consider the set of issues that is generated by the debate over the non-delegation doctrine. First, as a supporter of non-delegation, Theodore Lowi claims that political meaning is subverted by interest group influence at the administrative stage. And his reworking of the traditional expression/implementation formula resembles Habermas's attempts to banish bargains and compromise from the political sphere. Second, as a supporter of wide delegations, Jerry Mashaw argues that the objectivity of administrative rulemaking and adjudication provides a better chance of delivering what he calls dignitary values than subjecting all decisions to the legislative branch. He addresses the need to limit administrative discretion in a mode similar to Habermas's efforts to equate administration with instrumental reasoning. Third, the section will consider the way in which the debate over non-delegation casts administration as an imperfect attempt to implement law that is itself perfectly legitimate. Jacques Derrida and Jodi Dean point to the inevitable limits of administration that arise not from the difficult task of matching

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<sup>2</sup> In the distorted relationship between administration and the public sphere that Habermas claims has arisen with organized capitalism, the circuit of power cannot be repaired through guaranteeing participation, because the public sphere itself is tainted by its failure to include a norm against the application of state power in favor of partial interests. Publicity is as likely to yield only "acclamation" (STPS, 176) or "manipulation" (STPS, 178) as legitimation. And in this sense, both delegation and non-delegation of power can signal the distorted relationship between state and society that Habermas bemoans. On one hand, a delegation of power can mean that a law that was general enough to foster agreement is given content by strategic actors in the administrative phase. In such cases, "the consensus developed in rational-critical public debate has yielded to compromise fought out or simply imposed nonpublicly" (STPS, 179). On the other hand, where "Laws...assume the character of detailed administrative dispositions" (STPS, 179) advance planning subverts the influence of a critical public.

political will, but from the proliferation of the moment of decision throughout administration and the incompleteness of the legitimacy of public opinion. Finally, the section will turn to alternative pictures of the profession of public administration that reflect discreetness rather than an overarching focus on limiting discretion. John Rohr thinks that attention to the ethics of public administrators is crucial in this regard, while the work of Camilla Stivers suggests that, though administrators cannot overcome the fact that they face constrained alternatives, they can refuse to refuse normative arguments based on the improvement of the condition of the world, and can design policies that recognize the partiality of political legitimacy through flexibility, or, if appropriate, reversibility.

Theodore Lowi, in The End of Liberalism, declares that “institutions of government ought to say what they are going to do to us before they do it; and if they cannot say they cannot act” (Lowi 1979, 299). In broad terms, Lowi argues that appropriate political speech precedes action and defines standards for government acts. Without such a link between saying and doing, he fears “that policies without a rule of law will ultimately come to ends profoundly different from those intended by their most humanitarian framers,” and that instruments of the state, though loved dearly, can generate evil, which can be predicted by the extent of the “absence of public and explicit legislative standards by which to guide administrative conduct” (Lowi 1979, 247). These concerns lead Lowi to embrace a strict version of the non-delegation principle: one in which lawmakers restrict the substance of laws to those arising from the moral intent of the Constitution, and have a duty to name standards for implementation that will see this

moral intent through to practice. Lowi is afraid that, with the delegation of decision making power, the rule of law will be lost, and for him this means both a loss of administration (clear rules and expectations that provide the grammar of politics), and a loss of politics itself (the moral battles that give discursive substance to public life).

Lowi's suggested replacement public philosophy is meant to restore rule of law through ensuring political and democratic content, but restricting it to a juridical form. Lowi's approach, by his own description, echoes conclusions drawn by Hayek about modern society that the gap between policy language and implementation reflects limitations of social understanding.<sup>3</sup> He calls "juridical democracy," his recommendation for reform, the "rule of law operating in institutions" (Lowi 1979, 298). In other words, Lowi is concerned with bringing administration by government under the wing of the rule of law, rather than leaving it to interact willy-nilly with economic and interest-group imperatives (Lowi 1979, 22). Like Hayek, Lowi thinks lawmaking is properly an increasing articulation of general and up-front rules of conduct rather than judging on the merits of particular cases.<sup>4</sup>

His approach includes two important aspects, that, like Habermas's co-original

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<sup>3</sup> Lowi rarely makes explicit reference to Hayek, and this essay does not argue that he is an interpreter or scholar of Hayek. However, Lowi does say that he "found himself confirming, by process of elimination and discovery, many of [Hayek's] fears about the modern liberal state" (Lowi 1979, xiv).

<sup>4</sup> The problem for Hayek is that delegation is so often resorted to because the matter in hand cannot be regulated by general rules but only by the exercise of discretion in the decision of particular cases. In these instances delegation means that some authority is given power to make with the force of law what to all intents and purposes are arbitrary decisions (usually described as 'judging the case on its merits.') (Hayek 1944, 66). And where a central authority delegates such decision-making capability, it represents "the largest single group ...whose members agree sufficiently to make unified direction of all affairs possible" (Hayek 1944, 137).

principles, are broadly concerned with the actionability of guarantees made by law, and popular sovereignty. The first aspect, the “juridical” element of “juridical democracy,” focuses on what he calls “form and the real impact of form,” which in lawmaking means up-front and clear rules, that do not in themselves ensure morality and universality. He argues that lawmakers must specify the rules that govern interaction among individuals and groups, setting out the boundaries of acceptable conduct and providing a stable environment for action. He observes that

Hayek was the one libertarian wise enough to recognize that markets must operate within ‘the rule of law,’ which for him meant a particular kind of constitutional, stable, predictable political regime. But this meant *good* government, not *no* government (Lowi 1995, 107).

The identification of right and wrong, as well as how wrongs will be rectified, must happen before government policy is implemented.<sup>5</sup> In addition, Lowi opposes this “righting wrongs” to granting rights. What is wrong must be put into words including words about how it will be rectified. It is not enough to make a statement about an ideal world (as in granting the right to clean air). Where law creates rights rather than obligations it is problematic and generates frustration because “no agency rule can attain more than a fraction of a legislated goal,” and the implementing rules are “an inadequate

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<sup>5</sup> As Elkin points out, Lowi goes farther than Hayek in his willingness to speak in terms of government seeking justice. Elkin says this is because “... Lowi, in contrast to Hayek, takes for granted that a modern democratic state will address a wide range of policy questions, and will thus find itself trying to alleviate the plight of many of its citizens. Thus, while in sympathy with Hayek’s views, Lowi replaces Hayek’s Rule of Law with ‘good law,’ which is law with standards” (Elkin 1993, 23). In this way, Lowi’s reformulation of the problem of banishing discretion treads onto the planning terrain that Hayek rejects. This reading of the difference between Lowi and Hayek may be perspicuous, but there is another and perhaps more important similarity in Lowi’s insistence on the priority of rule of law to representation.

remedy for the legislated right” (Lowi 1995, 74).<sup>6</sup> The real impact of form comes through joining it to standards for implementation, and not from any connection to morality. Rather, the form of law is a separate issue from the moral content. In this, Lowi is reminiscent of Hayek who points to the costs that come with being able to say definitively that the world is just. As Hayek puts it “the prior question is whether it is moral that men be subjected to the powers of direction that would have to be exercised in order that the benefits derived by the individuals could be meaningfully described as just or unjust” (Hayek 1944, 64).

That the form of law does not and should not itself ensure moral content introduces the second aspect, the “democratic” side of “juridical democracy,” that addresses itself to delivering moral content to the law. The particular forms and particular contents must meet the criterion of equal protection of the law.

Taken by itself, the juridical principle appears to be comfortable with, say, segregation as well as integration laws, as long as the laws possess legal integrity. But within the context of democracy, especially if one lived by the juridical principle, it would simply not be possible to support segregation in any form, because a democracy cannot abide two systems of law, two criteria for the provision of governmental services... (Lowi 1979, 299).

Juridical democracy asserts that, because “wrongness” is a political quality and not a quality of truth, it is not morality until democracy makes it so. In this sense, politics is morality in that it tries to identify what is generally accepted as right and wrong, in language that is neutral as to those affected by law. Importantly, the morality that juridical democracy delivers, as Lowi understands it, is a politically validated morality.

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<sup>6</sup> See also Schoenbrod (1993).

Non-delegation forms the backbone of Lowi's prescriptions. In his view, the manifestation of the demise of the political process is "enabling legislation." A program that allows good intent to be displaced is almost as bad as "evil intent itself" (Lowi 1979, 237). The appropriate reply, for Lowi, is to reinstate the rule of law by banishing discretion and demanding publicity. Such a principle limits the power of the powerful who "would be immobilized if they had to articulate what they were going to do before they did it" (Lowi 1979, 298). It would also relieve lawmakers of the burden of an impossible responsibility by placing the onus on the law itself. "...when the rule of law is clear and the program nevertheless fails, we would then have a basis for changing the law rather than vilifying the responsible individuals as though they were guilty of malfeasance or bad faith" (Lowi 1979, 299). The courts should declare "invalid and unconstitutional any delegation of power to an administrative agency or to the president that is not accompanied by clear standards of implementation" (Lowi 1979, 300). The president should also view the constitution as requiring her to veto "a congressional act on the grounds that it said nothing..." (Lowi 1979, 301).

On the surface, this claim of Lowi's that political speech can be neatly separated into decision and implementation suffers from what seems to be a simplistic view of the political process. It seems to imply that governments could actually "say what they are going to do to us," in a way that is meaningful to all concerned, comprehensive of the point of the action rather than simply the material steps that will be taken. In other words, from Lowi's perspective, saying what government is going to do to us, the content of "good law," would have to encompass all particular understandings of what the law is

meant to accomplish. This would be set out in “standards” that govern both implementation and evaluation.

And this seeming naivety suggests empirical, political, and philosophical problems. First, it makes a problematic empirical claim that the Constitution does in fact generate one answer, which is contradicted by obvious disagreement. Second, political disadvantages can follow from a naive separation between decision and implementation when, in its blindness to different reasons that might support a particular program, it loses the benefit that might come from strong agreement on policy for varied reasons. It also threatens, in the political realm, to foster the bureaucratization that an exclusive valuation on preserving legislative intentions might require. Finally, such a view makes a problematic twofold theoretical claim about the status of constitutional projects: issues arising out of the Constitution are the only ones that meet Kant’s publicity principle, and to the extent these issues achieve a crystallization in language, this justifies implementation. This amounts to a claim that if one can get away with saying they are going to coerce you, then they have earned the right to.

But Lowi’s project suggests a revision of the traditional expression/implementation dichotomy that hopes to skirt many of these problems by asserting, along with Habermas, that political legitimacy depends upon banishing bargains and compromise from the decision. Rather than accept the usual distinction between expressing political will and figuring out whether and how this might be accomplished, Lowi insists that elected legislators say both at once, and express the political will by identifying specific wrongs through describing the means to address them. Where deliberation threatens to turn to

bargaining over ends that are not shared, non-delegation should help to ensure that decision happens at a level that is general enough that particular purposes are not favored. He asserts that expression without reference to implementation amounts to empty rhetoric because the political system cannot be naive to economic stakes of its power.

By insisting upon “saying before doing” Lowi hopes that where deliberation tends to defer decision indefinitely down the line of implementation, non-delegation and a focus on elections as the distributor of decisionmaking power will force law to provide order and clear expectations rather than interpretations of merit. The impetus to delegate, for Lowi, arises not from democratic and participatory urges, but from self-interested and collective action effects of a complex, capitalist society, and from the tendency to replace moral with economic rationales for government action. The two parts of his “juridical democracy” - clear, up-front rules, and equal protection of the law - are designed to recognize the collective action effects arising from the economic and social milieu, on one hand, and to deliver political morality, on the other. In this way, representation is subordinate to rule of law, but democracy is looked to as the source of morality for government acts.<sup>7</sup>

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<sup>7</sup> For example, contrast Lowi’s conclusion about school integration to Arendt’s. Lowi argues that city boundaries must be destroyed in favor of constitutional duties. Lowi’s revision of the expression/implementation formula actually amounts to a merging of political and administrative, normative and purposive reasons, that are justified in terms of one another. *Decisions regarding segregation cannot be delegated to local constituencies, where city boundaries interfere with deliberation whose terms are set by the constitution.* Lowi argues that urban policy should be a matter of “righting wrongs” (Lowi 1979, 197), and this does not require neutral specialists good at managing a city but “moral choices” and a citywide polity (Lowi 1979, 185). Of black separatists, Lowi says that their newfound identity cannot offer a position from which to support this or that policy (Lowi 1979, 266). According to Lowi, *Brown vs Board of Education* serves as the “paradigm of the liberal approach to government,” because it appeals to educational achievement even though “virtually everyone in America except a few rabid racists agreed that racial segregation was morally bad” (Lowi 1979, 15).

From this constitutionalist perspective. Lowi sets up a contrast between desegregation policies and



Lowi's focus on the primacy of election in determining the proper decisionmaking authority recalls Frank Goodnow's early description of the distinction between politics and administration as one of the expression of state will versus the execution of state will, with the expressing authorities assuming prominence in a popular government because they can be made more representative. Goodnow thinks that government work can be described in terms of just these two functions, one of which must be subordinated to the other for the sake of harmony. And the natural tendency in a system with representation through elections, even when the Constitution grants the executive power a certain amount of independence, is for the expressive function to exert control through extra-legal means such as the political party (Goodnow 1900, 25).

But the claim that the legislators' direct popular election justifies the subordination of the other members of government has generated much criticism. Goodnow himself does not conceive of the distinction between government functions in institutional terms. The legislative branch sometimes gets involved in executing state will through special legislation dictating means, while the executive members (including the courts, executive branch, and administrative authorities) sometimes express state will through mechanisms such as the executive veto (Goodnow 1900, 20). In addition, the legislative branch often

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policies designed to improve educational achievement, arguing that only the former is an appropriate object of federal government action, while the latter is the responsibility of parents. In his view, education policy figures as a topic for federal intervention only when Constitutional values, such as equality before the law, are threatened by practices like racial segregation. He adds that "...there are many substantive issues upon which juridical democracy as a public philosophy would be silent, because no particular outcome would threaten to violate democratic notions of citizenship and equal treatment..." (Lowi 1979, 299). Improvement in educational achievement, because it is based only on the responsibilities of parents toward their children, should not be the object of national government administration. Concern for educational achievement is awkwardly equated with judging on the merits while integration as a goal is not, and a stark separation of morality and interest is generated.

exerts too much control over the executive function, reducing both the representativeness and efficiency of government. For example, representation is reduced through attempts to manipulate the party system, while efficiency suffers when the legislative branch exerts its control over the executive for influencing the future expression of state will rather than for implementing already expressed will (Goodnow 1900, 38).

Of course, Lowi does not argue that the legislative branch is a mirror representation of the people, but that it has a special responsibility that is more akin to Hanna Pitkin's "responsiveness" as enhanced by Anne Phillips's notion of "presence." Pitkin explores the many different ways in which representation is understood, and she concludes that "we show a government to be representative not by demonstrating its control over its subjects but just the reverse, by demonstrating that its subjects have control over what it does" (Pitkin 1967, 232). For Pitkin, while government does not have to constantly respond to public opinion, "there must be a constant condition of responsiveness, of potential readiness to respond" (Pitkin 1967, 233). Anne Phillips thinks that Pitkin's claim must be expanded to include not only ideas, but also presence, because "...when difference is considered in terms of intellectual diversity [opinions, beliefs, and interests], it does not much matter who represents the range of ideas" (Phillips 1995, 141). From this perspective, the important insight Lowi's "saying before doing" promotes is that "the very requirement for public argument (having to convince others of your point of view) ... help[s] us revise and reconsider our positions, for we become aware of consequences we had not previously considered and concerns we had previously overlooked" (Phillips 1995, 150). Along these lines, calls for delegation, if they bypass

the representative or deliberative moment, can seem anti-democratic. This picture of representation thus has a double face: interests are represented, but participants are also changed in the process.

But the element of Lowi's approach that sets him apart from Phillips is his concern about a stasis that develops not internal to deliberation or representation within a Constitutional system, but externally from the economic and social milieu within which deliberation rests. Non-delegation calms the cacophony of an unguided public philosophy, namely interest group pluralism, that comes with the inevitable expansion of complexity and administration, both public and private. Lowi originally published his End of Liberalism in 1969 amidst the protests and social unrest that in his view were beginning to reveal the exploitative effects of a settlement among interest groups that subverted the best intentions of Kennedy-esque liberals and disempowered large segments of the population. In 1979, Lowi's second edition trumpeted the dawning realization that such deal-making has no place in politics, and offers several concrete steps that can be taken to overcome the vagueness that left interest groups the space in which to negotiate away the good intentions of lawmakers.

Foremost in this story about the demise of the political process is the argument that the proliferation of interest groups, each with a particular influence on government, rather than increasing state control over the economy in the name of justice, simply severs the connection between the two (Lowi 1979, 36). For Lowi, this means that "politics became a question of equity rather than a question of morality" (Lowi 1979, 41). In this

sense, equality before the law is a moral category, while equity is an economic category.<sup>8</sup>

Lowi laments the purported derailing of the civil rights movement in the North where the

adoption of an interest group approach to welfare sidetracked the relatively

straightforward task of securing political rights, and displaced “saying” with a version of

economic problem-solving. The politics is supposed to occur up front, where a moral

decision is made by the society to address this a-political by-product of capitalism.

Instead, poverty was made into an economic question, a policy designed to enhance the

performance of capitalism by responding to the needs of unhappy members of the

capitalist society. In this way, the effort to reduce injustice was rendered “almost totally

discretionary” (Lowi 1979, 233), and those involved in the effort were given official status

as interest groups. In addition, in his analysis of legislation providing for OSHA and the

Consumer Products Safety Commission, Lowi argues that the lack of any up-front

identification of a wrong to be rectified or of standards for judging whether this wrong

was addressed, led to bargaining over particular cases and results (Lowi 1979, 118).

So politics as anything other than bargaining disappears, and this in turn results in

three losses: in scientific precision, in legitimation, and in the disappearance of

administration as the consistent application of rules that enables but also restricts pluralist

competition to its appropriate place. The free-for-all that accompanies this disappearance

of administration means not only that varied interpretations of the law can have conflicting

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<sup>8</sup> Iris Marion Young favorably cites Lowi in her discussion of the depoliticization of the welfare state (Young 1990, 74). But Lowi’s point is not quite that poverty was “depoliticized,” because Lowi thinks that welfare policy should be a relatively neutral program of addressing the random occurrence of poverty (Lowi 1979, 233). In this sense, political rights themselves are non-controversial.

effects in the world, but more importantly that the rule of law is itself subverted by those who wish to put aside interpretation of the law and advance their own agendas. In this sense, Lowi implies that varied interpretations are not the real problem. Those subverting the system know that they are seeking something different than the general interest, but collective action problems create an environment in which this is allowed to happen. Lowi ascribes it to a *lack* of understanding, to a “most meaningful, deliberate ignorance” (Lowi 1979, 232), and to an accommodation “deliberately sought by the interest-group liberals” (Lowi 1979, 233). Phillips argues that “[t]he worst scenario, perhaps, is when conflicts are indeed intractable, but the participants in discussion still reach agreement on what is really a false consensus” (Phillips 1995, 162). She finds this regrettable because it reflects the fundamental inequalities that can persist within what seems to be a rational discussion, privileging some positions over others (positions held by those with fine deliberative skills, for instance). For Lowi, the agreements that come out of interest group conflicts are “false,” because they represent a misuse of the political process for individual rather than public benefit.

So, like Habermas, Lowi thinks that proper implementation of the political will requires an effective limitation of strategic action, and that publicity of decisions is a central tool in this task. But unlike Habermas, Lowi thinks that an institutional differentiation between politics and administration is indispensable, because welcoming participation at the implementation phase amounts to fragmenting representation and making political will less clear. Lowi argues that increased representation is not a solution to the excesses of interest group pluralism. “Since the ‘new representation’ extends the

principle of representation into administration, it must either oppose the making of law in legislatures or favor vague laws and broad delegations that make it possible for administrative agencies to engage in representation” (Lowi 1979, 63).

Though Habermas makes a great deal out of this institutional/abstract difference, on the central issue of the legitimacy conferred through public decisionmaking, and the justification it provides policy implementers to refuse, avoid, or ignore normative claims, the agreement runs very deep. Both Lowi’s institutional approach and Habermas’s abstract/functional distinction convey the sense that one can gather all levels of the problem and its solution into one process, both so that negative externalities do not escape, and so that the process is protected from strategic action and from overly zealous administration. A stand against strategic action depends upon the rejection of administrative reconsideration of or grappling with normative questions once a decision has been made.

Brian Cook points to a reason this decision making is so sacred for Lowi, and his comments are also instructive about Habermas’s approach. For Cook, the importance of public decision making arises from its formative role in a democracy, and its part in telling the public who they are. He thinks that Lowi’s insistence is not a naive failure to recognize the political nature of implementation, but reflects a view that expression has to include explication of administrative means because means are political. In Bureaucracy and Self-Government, Cook draws upon what he calls the fundamental distinction between instrumental rationality and constitutive rationality, and the pictures of administration each implies. The instrumental view sees administration as a tool of state, a

means to achieving ends settled in the political sphere. And the ends appropriate to such a view is “human want satisfaction” (Cook 1996, 4). In contrast, constitutive rationality is “reasoning about forms and purposes,” and arises in part from the view that “the choice and use of even a simple tool, and certainly of more sophisticated technologies, can therefore have at least some perceptible impact on the end toward which one is using it” (Cook 1996, 5). This, according to Cook, is “another kind of effectiveness,” and it turns one’s attention to the way administration can alter the conditions that allow for the kind of society members wish to maintain. Cook thinks that inattention to the transformative role of administration obscures political conflict about consequences, and he finds that the historical loss of a publicly understood constitutive administration has resulted in much confusion.

An important source of an instrumental view of administration is a public culture that often sees the Constitution as the singular formative act and everything else as “*running* the Constitution” (Cook 1996, 11). Instead, Cook argues that political institutions are indispensable parts of the distinctive regime, and formative on the individual and collective levels (Cook 1996, 14-15). He says that administration should be considered an institution in this sense because it is crucial part of the institutional design of the Constitution; it emphasizes institutional values like stability, expertise, and practical reasoning; and agencies clearly influence the types and content of policy (Cook 1996, 20). For this reason, implementing standards must make reference to administrative institutions rather than assuming their existence, efficacy, and appropriateness.

Cook argues that Lowi’s proposal would foreground the constitutive rather than

the instrumental nature of administration.

Reanchoring the regime securely to the rule of law would not only encourage policy makers, especially legislators, to acknowledge and even understand the constitutiveness of public administration, it would imperatively require it. Having to say something substantive about ends and means would force them to consider the consequences of what they seek to do. ...legislators would have to consider the implications of their ends for the character and conduct of the citizenry and its relationship to government (Cook 1996, 169).

For Cook, Lowi's argument for particularity moves beyond instrumental claims that this delivers a more effectively functioning state and asserts that the relationship between politics and administration shapes the identity and potential of citizens. To the extent administration is severed from politics through delegation, the character of the state as Constitutional and of citizens as deliberative parties to the Constitution is subverted.

Cook thinks Lowi's formality of lawmaking brings laws and people closer together while allowing room for discretion over time (Cook 1996, 168). Thus, Cook argues that for Lowi the constitutiveness of democracy is connected to public decision making and resistance to strategic action. In this way, Cook thinks that Lowi tries, somewhat unsuccessfully, to resist the ability of administration to exceed the dictates of law.

On the other side of the non-delegation debate, Jerry Mashaw is also concerned about the appropriate way to limit the discretion of administrative agencies. But he argues that delegation protects the individual through the requirement of administrative rules in executive branch agencies, and that this arrangement also promises greater public welfare because the executive branch is potentially more responsive than the legislative branch. In "Prodelegation: Why Administrators Should Make Political Decisions," he explains that opponents have argued that delegation of lawmaking power to the executive branch



results in a reduction in legitimacy and to decreases in public welfare. He thinks that Lowi's particular version of the non-delegation doctrine arises from a rejection of the traditional pluralist reluctance to interpose law between interested parties. In this, Lowi thinks that enhanced authoritativeness, carrying messages about right and wrong and explicitly recognizing the coercive element of politics, increases the legitimacy of government by ensuring that the intent of the law is not displaced.

Mashaw does not disagree with Lowi's claim that authority must be interposed between parties in the name of justice, but he does disagree with Lowi's claim that the law itself must be specific. Mashaw cites empirical work in which "...the demand for justice seems inextricably linked to the flexibility and generality of legal norms, that is, to the use of vague principles (reasonableness, fairness, fault, and the like) rather than precise rules" (Mashaw 1985b, 86). For Mashaw, specificity at the lawmaking stage threatens to exclude many of those who find their connection to the legal system through an ability to identify with general norms, and this exclusion reduces legitimacy rather than increases it.

And, while for both Lowi and Mashaw an important task of the political process is to reduce discretion as much as possible, they locate discretion in different places for different reasons. For Mashaw, the discretion that must be reduced comes when street level administrators apply rules to particular cases. Mashaw thinks that extending a fair amount of flexibility to administrators developing rules to implement somewhat vague legislation is appropriate for three reasons. First, legislation is relatively difficult to pass while voter preferences are not stable over either time or space. So trying to be responsive to voters by passing a very specific law may hamstring government and reduce

responsiveness overall. “Broad delegations recognize that tight accountability linkages at one point in the governmental system may reduce the responsiveness of the system as a whole” (Mashaw 1985b, 98). Second, administrators are subject to decision making rules that do not apply to legislators, like requirements to perform cost/benefit analyses and offer explanations for their choices. Finally, creating law through deliberate and analytical rulemaking offers an alternative to voting as a means of preference ordering, especially given the problems Kenneth Arrow and others have identified with electoral sorting of preferences. He argues that “...delegation to experts becomes a form of consensus building that, far from taking decisions out of politics, seeks to give political choice a form in which potential collective agreement can be discovered and its benefits realized” (Mashaw 1985b, 99). In other words, Mashaw is not arguing that the generality of law is sufficient to efficiently and legitimately administered government programs, but that general laws must be joined by well-designed specific rules.

In Due Process and the Administrative State, Mashaw describes the framework of dignitary values within which such rules must be designed and applied with extremely limited discretion. Central to his approach is the attempt to identify a mechanism of administrative law suitable for sorting normative from technical reasons that is very similar to Habermas’s focus on evaluating institutions in terms of the forums for the particular kinds of reasons that are acceptable for each of the three functions - legislating, adjudicating, and implementing (BFN, 192). He provides an argument for restricting due process hearing rights so that an administrative state, which contributes to justice in the long term, will not be capsized by impossible demands. Administration, and the procedural

due process law meant to make it fair, does not always accommodate the particular, and this is not necessary to protect what he calls “dignitary values.” Rather, rules provide a “safeguard against domination, as a means for maintaining the social preconditions of individual moral agency” (Mashaw 1985a, 267).

The background against which Mashaw sets his account of administrative rules includes three models of administrative authority (Mashaw 1985a, 16-24). First, in what he calls the “transmission belt” model of administration, agencies do no more than implement very narrowly drawn statutes. This model drove the decision in *Schechter Poultry Corporation v U.S.*, the last time the Supreme Court applied the non-delegation doctrine to invalidate part of a statute, and is evident in Lowi’s prescription for a return to non-delegation. Second, with the advent of the New Deal and the massive increase in the size and scope of the administrative state that accompanied it, a new rationale for administrative authority centered on the expertise of administrators took hold. Finally, and corresponding loosely with the Great Society programs of the 1960’s, a new model of administrative authority found the legitimacy of administration in its admittance of participation that was excluded at the legislative phase. In part, this third model of the participative source of administrative legitimacy modified the earlier models to claim that truly representative implementation and expert rulemaking themselves require wide participation in administration. In this way, the participative model “synthesizes the historic foundations of administrative legitimacy into an ideal of delegated, rational, and fair administration realizable through decision processes designed to guarantee appropriate participation” (Mashaw 1985a, 29).

But Mashaw sees in this history a counter tendency towards substantive rather than procedural due process rights that moves away from participation and toward rationalization, especially as the costs of increasing participation are felt (Mashaw 1985a, 30-31). In the first step, administration implements policy rather than chooses. Later, administrators are viewed as experts who can rationalize market forces that created unrest along with prosperity. Then, administration is seen as a specialized forum for considering public policy issues fairly. And finally all of this implies making decision processes rational rather than only fair with respect to participation.

This tension between substantive and procedural rights produces the twin problems of overintrusiveness and underprotectiveness (Mashaw 1985a, 32-41). The first problem of overintrusiveness, according to Mashaw, followed upon *Goldberg vs Kelly* in 1970, when welfare rights were equated with property rights, so that a trial-like hearing could be demanded upon an administrative decision to deny eligibility. In response, administrators, attempting to reduce the number of hearings that might follow if recipients who were hastily given benefits were later denied them, began to tighten and objectify initial eligibility requirements. The decline of the profession of social work amounted to unfortunate collateral damage.<sup>9</sup> The second problem, of underprotectiveness, accompanied increasing attention to strictly procedural questions and the lack of money for hearings to adequately assess individual cases. The ominous result that began to emerge was increasing reliance upon what Mashaw calls the “irrebuttable presumption.” For example, in *O’Bannon vs Town Court Nursing Home* in 1980, residents of a nursing

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<sup>9</sup> Stivers presents an instructive history of the decline of social work (Stivers 2000, 252).

home that was declared below the standards required to receive government funding argued that if the legislative goal was to make residents better off, and if refusal to fund the home made them worse off because the facility would have to close and no other better housing was available, then the government should continue to fund the facility until some other accommodation could be found. According to Mashaw, this “irrebuttable presumption”

left long at large, .... will gnaw its way through most of the Statutes-at-Large, the Code of Federal Regulations, and the legislation and regulations of all subnational governmental units. It will solve the problem of the administrative state by abolishing the use of legal rules (Mashaw 1985a, 40).

The doctrine is both attractive and impossible because it does away with rules altogether in its claim that generalities that ignore the individual cannot be permitted, and that accuracy of existing rules is not adequate.

In response to these problems, Mashaw searches for a way to characterize due process claims that will provide for appropriate safeguards for individual recipients, but also not capsize the entire regulatory system. He claims that “a dignitary theory that sought to articulate, defend, and effectuate a process-oriented conception of procedural due process just *might* discover, in its quest for the core conditions of individual dignity, principles that could both explain and limit individual demands for particularized official responsiveness” (Mashaw 1985a, 166). The values he identifies do not necessarily require an active, participatory public life, only to specify the rights necessary to a particular liberal polity, and do not move from liberty to community as a goal (Mashaw 1985a, 169). And specifically with regard to process, he wants to “specify what processes define people

as dignified or self-respecting moral and political agents” (Mashaw 1985a, 171).

He identifies several core values including consent, democratic participation, instrumental rationality, and fairness; and four processes that reflect these different values, which are, respectively, negotiation, voting, administration, and adjudication (Mashaw 1985a, 231). The most important point is that the justice of the process turns on whether the values appropriate to it are upheld, and whether the process itself is fitting for the subject at hand (Mashaw 1985a, 239). Through such a “logic of collective decisional forms” (Mashaw 1985a, 223), an individual can be denied certain claims upon the administrative state while the state can still manage to see the individual as a carrier of dignity. For example, the value of participation, which implies the control that is requisite to self-respect, is reflected in voting as a decisional process. Administration is that special decisional process that ensures efficiency in the treatment of the particular, without claiming that the specific results must be just in order for the system as a whole to earn our admiration.

Having identified the values by which administrative policy is to be judged - predictability, transparency, and rationality - and having made sure that the other dignitary values are addressed elsewhere in other decisional processes present in the governmental system, Mashaw is free to clarify the bases for restricted due process hearing rights. As an example of his arguments on this point, one can return to *O'Bannon* to see in what terms the residents would be fairly denied a due process hearing (Mashaw 1985a, 243-245). According to Mashaw, because the legislation and rules establishing the program were cast in administrative terms - they did not include any basis on which administrators could

approve a nursing home that failed to meet the objective standards - the appropriate action of judges is to deny a hearing. Hearing such a complaint would have overlooked the question of the absent authority of regulators. He argues that, while residents have a substantive claim that their satisfaction should have been a criterion that justified a hearing, they have no claim that would have been able to be heard under the rules. A hearing would have considered two issues that are not appropriately entertained: whether administrators have limited discretion in denying criteria that perhaps should have been in the rule, in which case residents are given a "bargaining chip," in Mashaw's terms, for negotiating such criteria into the rule, or whether administrators have complete authority to use only objective standards. "A rational bureaucratic system, not a judgement involving individual special circumstances, was being implemented, and only some demonstration that system was incompetently designed or managed would have provided a basis for judicial invalidation of the existing decision process" (Mashaw 1985a, 244).

However, Mashaw is sensitive to the way in which the individual exceeds the need by which they are defined, that administrative policy is a clumsy way of addressing individual situations. And this perspective is crucial to his sense that administrative rules bolster liberty, but not in the positive sense. His arguments for the importance of the rationality practiced by administration lies elsewhere.

Inattention to questions of justice and authenticity can cause us to devalue unnecessarily the triumphs of administrative rationality. And, if we treat these instrumental reasons as small things to be put in a jar, thereby delegitimizing the only basis upon which the administrative state has developed to justify its actions, we may leave it bereft of defenses (Mashaw 2001, 35).

On balance, Mashaw argues, this approach to resolving the twin problems of efficiency

and justice has been a beneficial development, though it has been accompanied by the “loss of social work professionals as natural allies in political struggles over the extent and level of income support...” (Mashaw 1985a, 252). However, he argues that the way in which this approach frees the welfare process from overwhelming hearings also promises to recruit administrators themselves “to accept independent responsibility for the pursuit of liberal-democratic governance” (Mashaw 1985a, 253), perhaps making up, in some sense, for the loss of social work as a meaningful source of attention to the dignity of individual claims for exceptions.

Thus, for both Lowi and Mashaw the discretion of administrative agencies or lawyers adjudicating claims for exceptions from administrative rules is properly limited by the authority of sovereign political will-formation. By stating laws in terms of rules about right and wrong, rather than in terms of goals, Lowi hopes that law will be able to fend off the encroachments of strategic action.<sup>10</sup> Mashaw worries about the inability of law, given the complexity of society, to avoid the “irrebuttable presumption” that can undermine it. In both cases, however, the difficulties point to the prevalence and power of strategic action, and the complexity of society, and do not reflect back on the law itself. In this sense, the debate over non-delegation casts administration as an imperfect attempt to implement law that is itself perfectly legitimate.

In contrast, Jacques Derrida and Jodi Dean point to the inevitable limits of administration that arise not from the difficult task of matching political will, but from the proliferation of the moment of decision throughout administration and the incompleteness

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<sup>10</sup> See Cook’s discussion of the difference between rules statutes and goals statutes. (Cook 1996).



of the legitimacy of public opinion. Their views of the relationship between law and its implementation help to clarify the meaning of demanding administrative discretion rather than limited discretion. Such a “post-discretion” approach pays attention not only to the fact that administration fills in because the law cannot grasp the complexity of implementation, but also to the partiality of law itself. For example, from the perspective of limiting discretion, political battles over moral statements take place within a complex and riven modern society that threatens to subvert the fragile meanings that are forged. One of the most pressing problems of modern states is ensuring that laws are specific enough to guard against importing other meanings. Lawmakers accomplish this, according to Lowi, by “saying before doing,” by considering what their moral/political decisions require in terms of changes in the world. By making a decision about what specifically is wrong and how to address it, and by limiting their decisions to issues that are amenable to such treatment, lawmakers ensure that implementation contains the kernel of morality that informed their decision.

But Derrida argues that such attempts always fall short. In “The Force of Law: ‘The Mystical Foundation of Authority,’” Derrida points to the inevitability of calculation at each moment in the political process.

That justice exceeds law and calculation, that the unrepresentable exceeds the determinable cannot and should not serve as an alibi for staying out of juridico-political battles... Left to itself, the incalculable and giving idea of justice is always very close to the bad, even to the worst for it can always be reappropriated by the most perverse calculation. It’s always possible. And so incalculable justice *requires* us to calculate (Derrida 1992, 28).

For this reason, all law carries such standards, so when administering rather than

legislating one is still participating in this aspect of law. Others have pointed to this inevitable characteristic of lawmaking, and Derrida shows why one cannot banish the moment of decision nor squeeze it all into one moment in which one can concentrate one's powers of moral discretion. While he and Lowi agree that statements about justice are particularly susceptible to abuse, Derrida thinks that attempts to avoid amorality are themselves problematic.

Derrida names three aspects of "calculation" that render Lowi's account problematic. First, calculation cannot amount to simply an application of a rule because this would contradict freedom. "For a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle" (Derrida 1992, 23). Second, every decision includes an undecidable core in which "...either it has not yet been made according to a rule, and nothing allows us to call it just, or it has already followed a rule ... which in its turn is not absolutely guaranteed by anything; and, moreover, if it were guaranteed, the decision would be reduced to calculation and we couldn't call it just" (Derrida 1992, 24). Derrida says that in contrast to "today's dominant juridical discourse and the category of decision right down to its appeals to medical expertise ..." (Derrida 1992, 25), every decision excludes even while it tries to administer a just result. And this undecidable core provides no anchoring way to decide, so that "...vertigo threatens to seize us the moment we see nothing but examples [merit] and some of us no longer feel engaged in it..." (Derrida 1992, 26). This is the

arbitrariness that haunts Lowi, through Hayek. However, Hayek thinks that only particular types of avoidable decisions result in such vertigo, and in his view when a decision is taken on them, it represents only the current balance of power. Following Hayek, Lowi seeks to banish “judging on the merits” from political debate, so that participants will not feel this tendency to disengage. But if this core haunts all political decision, then Lowi’s prescriptions are misguided. Finally, Derrida claims that every decision includes an urgency that disrupts knowledge. Though Lowi turns to non-delegation in hopes of limiting a deferment of democratic decision, the urgency and shortage of knowledge and understanding occurs at any moment in which a decision is made.

A second element in the partiality of law - the myth of the “public” - is characterized by Jodi Dean in “Publicity’s Secret.” She claims that there is no “public” that advocates, opposes, or is constituted by policy, because “[n]o inclusion, whether of groups or information, people or issues, will provide enough legitimacy to justify what is claimed in the name of the public” (Dean 2001, 646). According to Dean, the overwrought concern with publicity and transparency in Habermas’s approach, that is shared by Lowi and Mashaw, actually works to obscure the actual structural problems of democracy and economy. According to Dean, the contradictory appearances of publicity and secrecy in Habermas’s work betray a mechanism through which public opinion is both created and used to justify public action at the same time. With regard to his use of Kant and Rousseau, Habermas’s citizens reveal a suspiciousness that results in demands for transparency and disclosure so that action is autonomous (Dean 2001, 639). She

disparages the claim that “the public has a right to know,” and that information is crucial in constituting the political and policy community, in “justif[ying] our certainty in our convictions” (Dean 2001, 640).

Her argument is not that information is not important but that, in setting itself against the manipulations of the consumer society, the theory of the critical public creates a fiction - public opinion - that turns attention toward revealing what the “public” needs to know in order to make decisions, and presents itself as the crucial data. “...[I]f a big-city mayor justifies efforts to increase the presence of the police and decrease the presence of the homeless on the basis of public opinion, is it not possible that some will believe that others have this opinion, and hence might this mayor then actually produce the opinion to which he claims to be responding” (Dean 2001, 648)?

In going where the “law cannot grasp,” in Cook’s words, administration reveals not only that it must tread into unknown territory in order to successfully implement the law, but that the law’s legitimacy is itself partial. From this perspective, it becomes crucial to consider ways of treating dissent that respond to the promise of political freedom rather than sovereignty, and to explore alternative pictures of the profession of public administration that reflect discreetness rather than an overarching focus on limiting discretion. In this respect, Cook argues, John Rohr provides a contrast to Lowi because, rather than trying to banish this capacity of administration, Rohr tries to delineate a set of ethics that might guide administrators in their work beyond the specifics of law.

Rohr has long argued that public administrators should both be aware of and celebrate the constitutional status of their duties. He thinks that Lowi’s focus on popular

election as the sole determinant of authority obscures the fact that the Constitution provides for twenty-two paths to becoming an officer of the government, each of which has a legitimate role in governing within the sphere designated for that position (Rohr 1995, 41). In his view, “no specific institution of government *re-presents* the people, that is, presents them a second time as though it were a microcosm of the people themselves” (Rohr 1995, 39). From this perspective, it is the powers of Congress that are properly considered to be *delegated*, from the Constitution, and in turn from the people who grant their tacit consent to that document. And court officers who exercise the power of judicial review are acting no less representatively than the Congress who responded to popular demand for the overturned act.

But in To Run a Constitution, Rohr goes beyond an argument in terms of “legal correctness,” and claims that the administrative state merits “confidence and respect,” and even “warmth and affection” (Rohr 1986, 174), in part because of the role it plays in “healing” the constitutional problem of participation in a nation too large to adequately provide it through congressional representation. The administrative state can help with both the quantity and quality of representation. By offering a mode of participation to millions of U.S. residents, the large federal government provides a direct connection to the governing role that the constitution anticipated. By employing people closer to home (most Federal civil servants live outside Washington), the extensive reach of the federal government may more likely approximate the character of the nation in this set of representatives. Rohr explains that this possibility draws attention to the representativeness of those in the civil service, and to the importance of programs that

strive to distribute these positions in line with the ethnic and class makeup of the country, and those that attend to the civic virtue of employees.<sup>11</sup>

Rohr sets his views against Wilson's and Goodnow's accounts of administration, in which, according to Rohr, the administrative state is a necessary outgrowth of modern complexity but has no independent constitutional status. In this way, they contributed to an aura of illegitimacy that has since followed public administration as a profession.

Wilson and Goodnow "depart from the framers together when they locate sovereignty within an institution of government and not with the people themselves once a government has been formed" (Rohr 1986, 85). Their views also share a hostility to the separation of power. For Wilson, administration precedes and exceeds constitutional government, and can address the "excesses of democracy" much more effectively than separating power (Rohr 1986, 74). Rohr admires Wilson's understanding of the importance of administration as a central government function, and his attention to the stakes of the individual administrator in making sure it functions well. But Rohr argues that Wilson also displays naivety to the real and practical effects of separate power as it arises from the

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<sup>11</sup> In a similar way, Philip Petit argues for statistically representative executive agencies. He explores a distinction between freedom as non-interference and freedom as non-domination. An important aspect of his advocacy of the latter rather than the former as the appropriate way to understand freedom is his view that "what is required for non-arbitrariness in the exercise of a certain power is not actual consent to that sort of power but the permanent possibility of effectively contesting it" (Petit 1997, 63). In this sense, contest means challenging the assumption of shared interests, and changing state activity. One implication of this is that the amount of discretion executive agencies should have depends upon how closely they advocate the interests of those affected. Agents, who are limited in their discretion and seem to act non-arbitrarily, if they are the agents of coercive law that does not track the interests of those who are coerced must be considered legitimate targets of complaint (Petit 1997, 65). "Inclusive democracy," having the effective power to contest government acts, for Petit, requires elective representation in the legislative branch, and statistical representation in the administrative and judicial branches. "Let the administration or the judiciary become statistically unrepresentative of major stakeholders and there is no longer a guarantee that members of unrepresented groups can make their voices heard in appropriate circles" (Petit 1997, 193).

Constitution, and this renders Wilson's views harmful to administrative legitimacy.

Similarly, Goodnow makes the misguided suggestion that political parties play a role in making sure the expression and execution of state will are in harmony, and that they do this by forcing those holding posts designated "executive" by the Constitution and state constitutions into alignment with the federal and state legislative branches. Within this framework, administration is but one element in executing state will - the technical function that follows upon the generalist supervision of the already expressed will (Rohr 1986, 87). While supporters of the New Deal expansion of governmental functions later defended their plans within the context of the founding debate, Wilson and Goodnow "suggested that an administrative state could not be reconciled either with the founding argument or, by implication, with the founding itself" (Rohr 1986, 180).

In contrast to Wilson and Goodnow on this point, Rohr thinks that administration maintains the fundamental political struggle envisioned by the Constitution. The assets of the administrative state are put to use by legislative, executive, and judicial officials but are controlled by no one branch.<sup>12</sup> Rohr argues that this autonomy is an important facet of the separation of power in a modern nation state. As legitimate constitutional actors, administrative officials even sometimes judge which branch needs strengthening and support it through carrying through its initiatives: "...administrators should use their discretionary power in order to maintain the constitutional balance of powers in support of individual rights," just as the three branches do (Rohr 1986, 181). In other words,

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<sup>12</sup> In the Blacksburg Manifesto, for example, the authors, including John Rohr, call for distinguishing bureaucracy as an organizational form from the public administration and to regard public administration as a "major social asset" (Wamsley et al 1987, 294).

administration is not simply an extension of the executive branch, but, as an independent source of power, contributes to a healthy tension between the branches.

However, in his claim that administration plays an important political role, he seems to place it above politics, as such. Though he calls administration a crucial element of politics in the U.S., in the political competition between the three branches for the control over administration, the agencies themselves sometimes seem to be the judges, and in this sense above the fray. For example, Brian Cook thinks Rohr both overstates his claim for administration as stewards, and understates the justified expectation that administrators should be guided by the Constitution (Cook 1996, 175-176).

Rohr recognizes the force of such a concern. One of his responses refers to the nature of an oath in relation to the profession of public administration.

Administrators do not differ from lobbyists in the sense that lobbyists are committed to causes but administrators are not. Administrators differ from lobbyists because administrators take an oath to uphold the Constitution, but lobbyists do not (Rohr 1986, 183).

According to Rohr, oaths do not mean that one promises to obey another, but imply fidelity to an authority that exceeds the oathmaker and the community before which the oath is made. And in the case of a professional oath, it also invokes the horizontal relationship between others in the profession. This adds up to a requirement, not for greater mechanisms of control over unruly administrators, but for administrators' greater understanding of the constitutional tradition to which they have pledged their support (Rohr 1986, 193). "It is only the Constitution that has power from the people" (Rohr 1986, 185). The oath to support the Constitution exceeds particular policies, and



demands, not that administrators can not be advocates, but that they subordinate this advocacy to “imperatives of the constitutional order” (Rohr 1986, 183).

A second and more effective response, however, refers to the different perspectives from which administrators must approach implementation in order to fairly and effectively design policy. The question of administrative treatment of individual rights starkly poses the issue that most often singles out administration as an illegitimate player in government and spurs calls for limiting the discretion of agencies through the courts. “Judicial intervention in defense of rights - for example, the rights of prisoners or patients in state mental hospitals - can irrevocably destroy the most careful long-term planning and the most elegant cost/benefit analysis” (Rohr 1986, 185). In Rohr’s view, administrators should think like judges when they undertake such planning or analyses. When administrators think outside the managerial box and consider judicial, legislative, and executive values, they perform as “statesmen” (Rohr 1986, 185).

Finally, Rohr agrees with Lowi about the negative effects of interest group liberalism, but he does not think administrative discretion is to blame. On one hand, administration manifests the autonomy required by professionalism, but on the other hand, it has both “subordination to constitutional masters and freedom to choose among them” (Rohr 1986, 183). And with this professional merging of public interest and fidelity to the Constitution, Rohr offers a way to recognize the value of the politics/administration dichotomy while attending to the political role of administration. “Perhaps these organizations will eventually develop into influential professional associations which will take positions on policy issues of the day in the name of nonpartisan managerial

expertise”(Rohr 1986, 186).

Camilla Stivers is also concerned with how administrators should proceed with this realization of the partiality of law and thus of policy, and, like Rohr, she thinks that viewing public administration as a profession is very important. But she goes farther than Rohr in suggesting an advocacy role so that these professionals are not just proficient at methodological questions about implementation, but undertake research that tells them what to advocate based on what will improve the world. She argues that the appropriate sensibility is reflected in administrators who “refuse to get it right.” Viewing what administrators do as “governance rather than management” requires an openness to citizens who are willing to voice dissent to the specific policies that promise to change or have changed circumstances (Stivers 1996, 262). She rejects the notion that administrators have a special claim - of expertise or enlightenment - that enables them to displace politics and deliver order. Rather, following Honig, she sees both the urge to solve problems once and for all, and the urge to “disrupt in order to make better,” in every polity (Stivers 1996, 261).

Recalling Rohr’s claim that the federal and other levels of government play an important role in providing participatory opportunities, Stivers suggests that contests over the form and implementation of policy render executive agencies “significant sites for ... performative identity development, and the role they play in either constricting or expanding the range of legitimate citizen identities [is] a matter of considerable urgency” (Stivers 1996, 270). She argues that, in a society in which public dialogue is scarce, it is crucial to ask “Can we conceive of processes that involve citizens in administrative

affairs... in such a way that the ability to give voice is open not to an abstract, universal 'all' but to different real humans in all their plurality" (Stivers 1996, 266)? In contrast to Mashaw's attempts to exclude certain claims through limiting due process hearings, Stivers holds that

No questions, no identities, no situations are *by definition* off limits. The question of what counts as political is itself a political question (Stivers 1996, 272).

And, from this perspective, the question of where the law stops and the administrative role starts cannot be resolved apart from the resolution of the question in front-line implementation.

According to Stivers, this perspective rejects the administrative management paradigm that, following the arguments made by Herman Finer in the 1940's, tried to limit administrative action to accountability to legislators. It also differs from the recent arguments associated with the "reinventing government" approach that results from it and makes accountability to citizen consumers the most important and defining task of public administration. Rather, it follows Carl Friedrich in arguing for ethical and practical reliance on public-spirited administrators (Stivers 1996, 275). Along these lines, she offers three examples of attitudes that reflect this vision. First, administrators should think of the public interest as a guide in a process of policy implementation, as a standard against which particular policy decisions and actions can be "coherently legitimated" rather than as a "substantive reality" (Stivers 1996, 273). Second, administrators should have a "preference for tentative approaches and organizational learning over techniques like policy analysis and decision science that purport to get it right once and for all" (Stivers

1996, 272). Finally, she stresses the importance of what has been called the “agency perspective,” described in the Blacksburg Manifesto as the view that “many agencies are repositories, and their staffs are trustees, of specialized knowledge, historical experience, time-tested wisdom, and a degree of consensus about the public interest as it relates to a particular function of society” (Wamsley et al 1987, 301).<sup>13</sup>

Stivers provides a deeper account of these alternatives and a sense of a more discreet role for administrators in Bureau Men and Settlement Women. She reconsiders the current state of public administration as a profession by tracing the history of the emergence of the field out of a past shared with other notions of public attention to social problems. The progressive era saw two reform impulses - rationalization and social justice - that overlapped and were embraced in varying degrees by the bureaus of municipal research, on one hand, and the settlement houses and other women’s reform groups, on the other hand (Stivers 2000, 5). “Reformers who viewed the city as a business claimed that the ultimate aim of government reform was the improvement of city life, while those who viewed the city as a home accepted the importance of efficiency and effective administrative methods.” Later, however, as the professions were funneled into the restrictions of their respective sexual stereotypes, and as the drive for political legitimacy through scientific methods squeezed out explicit concern with social purposes, “there turned out to be no place in either profession for policy advocacy or the improvement of

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<sup>13</sup> Richard Rorty reflects a similar view in his skepticism about calls for participatory administration. “The public, sensibly has no interest in getting rid of capitalism until it is offered details about the alternatives. Nor should it be interested in participatory democracy - the liberation of the people from the power of the technocrats - until it is told how deliberative assemblies will acquire the same know-how which only the technocrats presently possess” (Rorty 1998, 104).

living conditions” (Stivers 2000, 65). Indeed, the historical record shows that reformers began to feel the need to justify their effort to improve living conditions (Stivers 2000, 48). The most prevalent story today about the history of the field sees it arising out of the progressively efficient techniques of the research bureaus and forgets the role of the women’s reform movement. Stivers hopes to rectify this oversight and, in so doing, provide a reinvigoration of this aspect of the profession. Such flawed histories “neglect the fact that the expansion of social welfare and other governmental programs and the administrative processes to support them - the development of an administrative *state*, in fact - were mainly the result not of the bureau men’s science but of advocacy based on the results of practical experiments: pilot projects, in effect, conducted by settlement house residents and clubwomen” (Stivers 2000, 14).

In her review of the history of the profession, she finds a vision of public administration as advocacy in which administrative discretion contributes to democracy because policies are based on in-place research rather than scientific management. Factfinding and advocacy merged in the work of settlement houses to understand living conditions with a view to advocating policy (Stivers 2000, 78). Their decisions about policy were based not only on expertise but on “a sense of the public good” that came from their research (Stivers 2000, 101). “By first taking on public problems and then arguing for governmental expansion, reform women exercised the kind of authoritative judgement on public questions that has long been a hallmark of active versions of citizenship in Western societies” (Stivers 2000, 93). Eventually, however, this perspective faded and was replaced by the current infatuation with methodology and efficiency. “A

point was reached where people bent on meaningful change found themselves having to settle for relatively minor improvement or, worse, were no longer able to tell the difference between the two” (Stivers 2000, 5). She insists that tenured faculty in public administration departments have the freedom to question the current status of the field (Stivers 2000, 137) and insist that “...improving the conditions of people’s lives ought to be the first concern of those who care about what government should do and how it should be done well” (Stivers 2000, 136).

However, in an important sense, Stivers mischaracterizes the view of administration that might be inspired by Arendt’s work. In their professional role, administrators are not actors in Arendt’s understanding of the term, though there is nothing that prevents individuals who work as administrators from taking on the role of political actors, as the next section discusses.

Rather, the administrator *as* administrator faces a starker choice between, as Iris Marion Young puts it, the activist and the deliberative democrat. The deliberative democrat calls the activist “*unreasonable*” because she refuses to engage the arguments offered in the deliberative forum (Young 2001, 675). But, according to Young, another meaning of “reasonable” is recognizing problems that can be addressed and taking the appropriate steps, which go beyond engaging in reason-giving to other modes of communication and generating inspiration to action.

On the surface, according to Young, the difference between the two types may come down to their respective faith in the potential for change, but on a deeper level, the difference comes down both to structural difficulties in accommodating participation, and

more deeply to the hegemonic discourses that may constrain alternatives. “To the extent that such implementation must presuppose constrained alternatives that cannot question existing institutional priorities and social structures, deliberation is as likely to reinforce injustice as to undermine it” (Young 2001, 684). She praises James Bohman for his attention to the ability to “*initiate* discussion” as well as participate (Young 2001, 686), but this concession cannot overcome the difficult position in which administrators find themselves.

But, while administrators cannot overcome the fact that they face constrained alternatives, they can refuse to refuse normative arguments based on the improvement of the condition of the world, and can design policies that recognize the partiality of political legitimacy through flexibility, or, if appropriate, reversibility. For example, Mashaw’s arguments for limiting administrative due process hearings excludes the possibility that these individual exceptions undermine not the claim to consistent fairness, but the overall claim that the policy amounts to improvement. From Arendt’s perspective, dissent to policy undermines its claim to consent, a challenge that is not addressed by answering “except for you, the policy is just.” An alternative possibility might be to see due process hearings not only as requests for exceptions, but as an important source of future revisions. Recipients who know their complaint will not be heard may be discouraged from bringing forward what might turn out to be a novel claim, or to represent a claim that is so widespread it undermines the program. In one sense, it would seem that, if political and administrative are linked in a single process, this would make it easier to dissent not only from specific policies, but from the political arrangements that produced them. But

because political decisionmaking, according to Habermas, responds to a different set of reasons (justice in general rather than specific improvements), challenge to political arrangements can only be made by showing a preponderance of injustice. Without such evidence, challenges to specific policies can only be made as demands for exceptions.

In addition, discretion points to the value of other sorts of public actions - the kinds of decisions represented by compromise, partial agreements, or temporary coalitions - that provide an authorization for administration through, ideally, much more visibly partial decisions than discretion allows for. Such agreements often have to respond to arguments about improvement - marginal changes to what is good right now - rather than moral progress, arguments that require individual accounts of the shared world on which opinions are based. For instance, Jane Mansbridge tries to think through the shape of agreement within intractable conflict. She disagrees with Lowi's assertion that government involvement in interest group negotiations - neocorporatism - assumes atomistic individuals with no recognition of the public interest, and she tries to evaluate what is necessary for such public spirited deliberation (Mansbridge 1995, 143). Hers is a form of the governance literature Lowi rejects as crass management when moral decisionmaking is called for.

## **SECTION 2: ADMINISTRATIVE DISCRETION AND THE 'FAIT ACCOMPLI'**

So, the debate over the non-delegation doctrine is a very limited vehicle for understanding administrative authority. On both sides of the non-delegation debate,



administrators are allowed to claim that they help deliver progress because they complete a *political* process that gains democratic legitimacy through implementation of political decisions. They claim a democratic pedigree to guard against illegitimate strategic post-decisional interventions and claim the privilege of authority that comes from that heritage. But problems of deliberation, including the inevitable disjunction between the content of deliberative decisions and their implementation, undermine efforts to extend the reach and frequency of deliberation. Quite aside from whether policies work, they are sometimes easier to implement if they are non-deliberative.

Such non-deliberative policy often draws the claim that it represents a “fait accompli” that damages the political process. The definition of “fait accompli” includes two parts.<sup>14</sup> First, it is irreversible. As such, “fait accompli” undermines the good faith participation of losers who demand the possibility of reconsideration at a later date. Second, “fait accompli” is unknown to democratic participants. Some have argued that these two parts are linked in democratic practice. When a policy is unknown, it can be reversed when uncovered if democratic participants wish. If a policy is irreversible, it is less problematic if participants at least had a say and were in a relationship of consent to the decision making body.

From the perspective of a primary concern with limiting administrative discretion and protecting the integrity of procedurally-correct decisions, the charge that a policy amounts to a “fait accompli” is the worst form of criticism. When laws and regulations

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<sup>14</sup> “An accomplished fact; an action which is completed (and irreversible) before affected parties learn of its having been undertaken.” (Oxford English Dictionary, online edition, s.v. “fait accompli.”)

seemingly appear out of nowhere and are irreversible, the lack of understanding of the origination of decisions undermines the validity of administration. To remedy this problem, Habermas's approach recommends working on the decision making process, making it more rational so that reversibility is less important and a policy is valid by the time it reaches administrators.

But if decision does not mark the distinction between political and administrative - and the justification for administrative coercion - then the significance of "fait accompli" must be reconsidered. From the perspective of discreet administration, this section will argue, administrative acts can be recognized as *nothing but "fait accompli."* and reducing their status in this way can enhance the possibility that implementation is subject to political standards. Honig says politics is never "fait accompli," but one of Arendt's most central claims is that, in some way, every act is irreversible and makes a new starting point. The emphasis shifts, when one insists on viewing "fait accompli" in this way, from decision making to implementation. Thinking of administration as discreet helps see that the challenge posed by "fait accompli" is not necessarily located in its violation of principles of discourse and decision making, because sometimes less deliberative acts can increase freedom. Rather, the challenge is to treat administrative acts as changed circumstances that can provide new opportunities for political action.

Consider the following three instances in which "fait accompli" is invoked. First, the settlement of the West Bank by Israelis is often cited as one of the most prominent examples of the use of "fait accompli." Benjamin Netanyahu advocated the strategy of creating "facts on the ground" that can affect the political process wholly outside the

deliberative process. In this case, deliberation is ongoing but is disregarded, and obscurity is exploited specifically to produce irreversible results.

Second, during the contentious debates over the October 1992 referendum on the Canadian constitutional structure, Charles Taylor commented that “Maybe if we can cool things for a while, we can avoid fragmentation and carry out some of the compromise by administrative order” (Taylor cited in LaForest 1994, 209). LaForest notes that “In moments such as this, Taylor demonstrates practically what he has lucidly explained in his philosophical anthropology, namely the place of pre-articulate elements in our moral experiences. In his nuanced advocacy for Canadian federalism, philosophical reason is not the only weapon” (LaForest 1994, 209). Words could not find agreement on what should be done, but the world demanded attention nevertheless. While deliberation is crucial, words cannot convey every meaning, and in a situation of ongoing contest what should be done can not always be specified beforehand.

Third, Gordon Allport noted, in The Nature of Prejudice, that the “democratic” route to integration - putting it to a vote - usually results in more protest than the “fait accompli” technique of implementing a policy without discussion.

Oddly enough, when the change is introduced without raising the issue for discussion there is usually no more than a flurry of excitement of short duration. The newcomers are tolerated and respected as soon as their merits as individuals become apparent (Allport 1954, 275).

He ascribes this to a psychological situation in which “most people... are double-minded about their prejudices” (Allport 1954, 275). They obey their prejudices out of convenience, even if they feel a little ashamed, but will accept an example or policy from

“higher up” if it is in line with their conscience (Allport 1954, 276). And this ambivalence, according to Allport, comes from the “basic habit of democratic society” in which citizens respect the majority will, especially if it is in line with their conscience (Allport 1954, 471). In the debate over whether law, to be effective, must always await a majority of citizens willing to obey it, Allport argues that Jim Crow laws actually created what is commonly considered custom in the South. He argues instead for the educative role of law that sets a high moral standard, as does the Constitution, and contrasts this to Nazi Germany where the “official morality... was low.” Allport concludes that “Administrators, more than they realize, have the power to establish desirable changes by executive order in industry, government, and schools” (Allport 1954, 510).

This section will argue that understanding how the three cases are different helps clarify the implications of discreet administration. First, it will contrast the three instances using the elements of good government found in Arendt’s work, showing that the first is qualitatively different than the other two, and that the latter two together reflect the non-sovereign idea of freedom in Arendt’s insistence upon the leader/follower relationship. Then, the section will consider how the “fait accompli” element of administration draws attention to the boundaries between political and administrative rather than between different levels in a system of federalism. Finally, the section will turn to the implications of this account of “fait accompli” for urban policy.

These three instances of “fait accompli” can be contrasted in terms of the elements of good government found in Arendt’s work, including the principle of opposition and the non-sovereign idea of freedom in the link between leaders and followers. From this

perspective, the important difference lies not in the quality or quantity of deliberation, all three instances are non-deliberative, but in the way the first does not retain a principle of opposition. In the example of West Bank settlements, administrative policy does not reflect a principle of opposition because it assumes that reactions to its policies are given. Those in favor of settlements assume that the particular reactions they want will occur, forever, if they take certain actions, and this is why they try to make their policies irreversible. Though some might be willing to sacrifice for principle, those who think in terms of "fait accompli" cannot believe that the destruction of Israel could be a possible result. In contrast, Taylor's suggestion of the use of administrative orders in Canada reflects a more temporary stance that implies a principle of opposition. In this sense, the use of administrative power responds to the demands of the world that must be held together, rather than to the drive to produce progress in history. Administrative policy produces results that are required in the present, but they do not propose to determine or exhaust reactions, which may include efforts to reverse those policies. Similarly, Allport's suggested policies direct themselves to leveling the playing field but do not assume the removal of prejudice.

But the latter two suggest different roles for administrators that together allow one to catch a glimpse the non-sovereign idea of freedom in Arendt's insistence upon the leader/follower relationship. Rather than characterizing freedom in terms of a sovereign will that is more or less successful in negotiating with other wills that are in the way, the non-sovereign idea of freedom opposes a relationship between leaders and followers to the working of automatic processes. For Arendt, the leader or the individual political actor

relies upon others who actually make the policy successful. “[F]or only with the help of others could the ... beginner and leader, really act ... carry through whatever he had started to do” (BPF, 166; PRUD, 205).

From this perspective, administrators can play two roles- placeholder or interrupter - both of which are crucial to understanding administration as discreet. On one hand, administration can be viewed as an institution that is a temporary placeholder against disintegration and automatic processes. Centralization is needed to keep the world from falling apart, and attention to the glue - things and relations- that hold the world together are important aspects of governance. On the other hand, the institution of administrative agencies can be a site in which political actors act and involve others in their interruptions of automaticity, so that freedom proceeds alongside governance.

Taylor’s invocation of administrative orders in the context of ongoing contest reflects the placeholder side of the non-sovereign idea of freedom. His comment reflects a sense of exhaustion at irreconcilable interests or values, and the willingness in such a context to suspend contest temporarily and see if circumstances change at all. People know that administration is substituting for agreement or decision, but they decide this is okay, and are willing to wait and see what happens.

However, in the third example of “fait accompli” administrators claim a different sort of authority for their work - rather than claiming authority that comes from a sovereign decision, administrators claim authority because they pay attention to habits that make life unnecessarily difficult, such as to the unthinking restrictions on freedom imposed by structural racism. On one hand, this different sort of authority is necessitated by the

fact that unthought processes can only be addressed by a formal response since they do not meet the threshold for deliberation.<sup>15</sup> On the other hand, this different source of authority emerges when administrators as political actors rely upon the link between leaders and followers, and consider recipients as crucial participants in the act the policy represents. Of course, Arendt bristles at the idea that integration is a moral rather than a political question. And to this extent Allport's account is at odds with the spirit of her understanding of good government. But the relationship between political and administrative acts to which Allport points, if separated from his moral and psychological claims, has affinities with Arendt's views.

Another example that might show this better is the way in which residential mobility programs can be understood in terms of an effort to strengthen this kind of relationship in which recipients themselves, through their tacit consent or dissent to policy, are the implementers or those who "really act" in Arendt's terms. Such programs arose with the design and implementation of an acceptable settlement to litigation charging HUD and the Chicago Housing Authority with intentionally segregating public housing. The resultant program, the Gautreaux Assisted Housing Program, named for one of the original plaintiffs, Dorothy Gautreaux, spanned over 20 years and assisted the movement of over 7,000 low-income families out of Chicago's lower-income neighborhoods. The program gave rise to many different housing mobility programs across the country, as well

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<sup>15</sup> Jennifer Culbert (2002) discusses the way in which Arendt calls for a formal response to Eichmann's crimes. Lynn Sanders (1997) characterizes the problems attending a sole reliance on deliberation, including the inappropriateness of demanding deliberation on some questions like those of racism pointed out by Frederick Douglas.

as inspired similar litigation in other cities including Baltimore.

Leonard Rubinowitz and James Rosenbaum, in Crossing the Class and Color Lines, report that Gautreaux was designed “on a napkin at a downtown Chicago restaurant,” and the design and implementation process largely excluded those who would be affected (Rubinowitz and Rosenbaum 2000, 38). In addition, administrators deliberately avoided publicity.

The general acceptance of the Gautreaux program was attributable to its very limited local impact, the use of a privatized, demand-side housing strategy, the quality of the Leadership Council’s administration, the media treatment of the program, and local governments’ incentives for acquiescence. Those factors produced a low-visibility program that received little public attention until it was well established, at which point it received positive notice that may have blunted any latent organized opposition (Rubinowitz and Rosenbaum 2000, 64).

In contrast to a scattered site element of the same consent decree, and to a similar program called Move To Opportunity (MTO) implemented in Baltimore and several other cities, the absence of deliberation meant a relative absence of dissent. The success of these programs<sup>16</sup> relies upon the residents who move and prosper in a way that evokes the notion of those “who really act” in the non-sovereign understanding of public acts.

The set of policies, like Gautreaux and MTO, designed to deliver residential mobility to lower income citizens often sparks the charge that administration has overstepped its bounds. This reaction is interesting because it draws attention to a conflict not between different political boundaries (federalism) but to a conflict between political boundaries, on one hand, and administrative boundaries, on the other. Administrative

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<sup>16</sup> For accounts of the level of success of such programs, see Ladd and Ludwig (1997) and Popkin, Rosenbaum, and Meaden (1993).



boundaries are defined both by the extent of problems and the reach of the policies designed to address them, neither of which is sealed by political borders. And to the extent administrative boundaries cross political borders, these political borders are challenged by the right of dissent implied by the participatory element of discreet administration. The boundaries that are exceeded are political boundaries, and it is the residents, themselves, who are not confined by the institutional boundaries of urban borders.

If, as Brian Cook argues, administration is distinguished by its ability to reach where the law cannot grasp, for urban areas this often means reaching into the suburbs. Debate over the relationship between cities and their suburbs has raged since the New Reformism of the 1960's that tried to respond to the massive population shifts from urban to suburban regions.<sup>17</sup> Reform approaches have included a mixture of faith in deliberation and expertise, recourse to principle and interest, and invocation of local and federal governments, but most believe that current processes cannot sustain the quality of life that drives them. Recent suggestions claim that changing the boundaries of the cities will allow deliberation to bring better results. Improvement is defined variously as more deliberate, more fair (in terms of access to services and choice), and more ethical or moral. These definitions of improvement are by no means uncontroversial and are met with counter claims that the market is as deliberate as freedom will permit, that services and

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<sup>17</sup> See Orser (1994). For an account of the recent changes in the political landscape wrought by suburbanization, see Gainsborough (2001). She finds that both predominant parties have changed their platforms to attract the votes of suburban residents wishing to escape the cost of city services. To avoid the results of such "balkanization," she recommends not just community-based initiatives but finding ways of stressing the shared fates of residents across borders and communities (Gainsborough 2001, 140). See also Rusk (1996), Frug (1993), Orfield (1997), and Downs (1984).

choice are most fairly distributed in terms of dessert, and that wanting to live with people similar to oneself is not unethical or immoral. Regardless of these differences, some have argued, the fates of the suburbs are tied to that of the cities, so one should give administration wide latitude to impose solutions for the benefit of both. And, this is all situated within the material and structural inequalities, as well as the ideology, of the suburb.

Suggestions to bring political and administrative boundaries in line with one another by expanding urban borders or getting rid of them altogether raise the specter of the “fait accompli” because they undermine the sense that polity precedes policy. For example, Susan Bickford, in “Constructing Inequality,” considers the effects of the fragmentation of local government on deliberative possibilities, and argues for ending forms of urban and suburban building that tend to “zone out” other people and make it unlikely that these other people will be seen as members of the same polity. Her argument turns on the claim that a more democratic - more inclusive - polity will produce better decisions about how to distribute regional resources. The trouble, as Bickford points out, is that, while urban residents often see suburban ones as co-members, the reverse is not true. For instance, some residents of suburban gated communities come to resent the overlap they see between homeowner association dues and city or county taxes used for “public services that they do not regard themselves as utilizing or for solving problems that they do not recognize as their own” (Bickford 2000, 360). In response, rather than focus on the fact that individuals do not have the right intentions - by analyzing psychological or moral theory - Bickford suggests that attention be paid to the institutional

arrangements that lead to bad policy choices.<sup>18</sup> We need to be deliberate about our constitution of the polity itself, rather than “being willing to give sovereign control to CC&Rs [conditions, covenants, and restrictions] devised by developers” (Bickford 2000, 364). Another result is giving an alternative to people who both want safety and a shared polity, so that people who find they can move to the suburbs, but cannot find a way to make the city better which would be their preference

But, in her suggestions, she draws attention to the expert element that threatens to undermine democratic participation - the image of policy (sharing resources more fairly) precedes and defines who should be in the polity, calling into question the way the division between political, but especially administrative, institutions is currently drawn. This requires a different sort of vigilance and analysis regarding administrative power than “limiting discretion” can provide, because the effects of the policy, wholly independently of questions of self-government, extend beyond the bounds of those who were welcome to participate in deliberating over the policy. And this is not addressed by claiming that all those affected by the policy ideally should be allowed to participate, because (1) often it is the effects of an absence of policy that extend beyond borders, and (2) such an approach would imply the highest level of centralization for nearly all decisions. In this sense,

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<sup>18</sup> She also draws upon the work of Gregory Weiher, in The Fractured Metropolis (1991). He argues that much of the segregation that is evident between urban and suburban areas is attributable to the way in which individuals make decisions about where to live. His research has shown that school and political jurisdictions, and especially their overlap, provide important data to people looking for houses in the suburbs. The data that is provided is not directly associated with race and class, but results in sorting individuals along those lines. What is powerful about Weiher’s account, as with other studies that reveal collective action effects, is that it recounts the unintended consequences of banal decision making, and the possibility that if the parameters of such decisions are changed, different results might emerge. However, Weiher moves one step further. Though he argues that the “immoral” result of segregation emerges through automatic processes and secondary effects, he also ascribes to movers the intention of eluding the social contract.

political and administrative frustrations undermine the notion that administrative power is legitimate if limited in its discretion. On one hand, this reveals a political frustration that you refuse to deliberate with us, because we consider you a part of our polity. And on the other hand, it reflects an administrative frustration that our administrative policies cannot reach you, because your actions affect us. The frustrating demand for policies such as reverse commute taxes and the difficulty posed by globalizing transformations reveal the problem that administrative policies often have to exceed political jurisdictions in order to be effective.

Similarly, for Arendt multi-layered government institutions are not appropriately viewed as tools of progressively more inclusive sovereign publics. Rather, her ideal - the council form of government - reflects the issue-specificity and locality of associational activity. Such opinions are not limited by political boundaries, these are external arrangements set up to facilitate both action/distinctiveness and administrative attention to the world, not to limit political freedom, understood as the coincidence of “we can” and “we will” that dissent is meant to foster. In this context, if one cannot dissent to the policies of other localities, dissent and consent mean nothing. Rather, what is required is a willingness to take action and “be personally held to account” (CR, 226, 228). Following Bickford’s approach, like Arendt’s, an argument like “this is our sovereign right as a suburb” does not demand complacency on the part of those in the city.

Casting the debate over administration solely within the confines of discretion obscures an important conflict between political and administrative standards that reveals the element of “fait accompli” in every public act. The challenge is to understand how

these acts can be more or less discreet in the face of practices of freedom.

## CHAPTER 6 - CONCLUSION

Two sets of questions motivated the dissertation. First, how might the traditional distinction between politics and administration be modified to accommodate Arendt's insistence that the *raison d'être* of politics is freedom? What can the concession that the world has to be kept imply for someone so keenly concerned with freedom? How can administrative power be made subordinate to this primary concern without instrumentalizing politics? How does Habermas's recent formulation of the concept of administrative power compare to Arendt's understanding of good government that works alongside political power? The second set of questions emerges from a more practical concern with how to appraise policies like Gautreaux in which an element of nonpublicity contributes to success. Given the unclarity of the link between decision and implementation, a crucial marker of the distinction between politics and administration for Habermas, such policies deserve a more insightful critique than is permitted by a focus on limiting administrative discretion. In what way do such policies "keep the world?"

The contrast between Arendt and Habermas developed in the dissertation shows that, because Arendt objects to the notion of freedom that is implicit in the idea of sovereignty, the justification of administrative acts through policing the transition from decision to implementation becomes problematic from her perspective. With this realization, one arrives at the notion of administration as properly discreet rather than limited in discretion. This understanding of the administrative element of "good government" demands more attention to administrative fabrication *as* fabrication, rather than as the reason for political activities that are also their source of justification. Where

Habermas thinks validity depends upon administration being considered the completing moment in a political process, Arendt thinks freedom depends upon seeing administration alongside political life. Because, for Habermas, anonymous linguistic processes *filter out* opinions that do not rest upon reasons, public administration reflects agreement on reasons. And because, for Arendt, associations *filter in* opinions that often challenge decisions, a “public” administration has to reveal irreconcilable goods and interests.

While Habermas is worried about the displacement of representation through strategic action, Arendt fears that power will be displaced through recourse to justification. While Arendt characterizes the use of centralized administration with some regret because it is prompted by the mess we have gotten ourselves into, a mess that may require a different balance between the political and administrative stories than we might like, for Habermas, the same institutions that facilitated some of the problems can be harnessed to deliver justice far and away into the future. This characterization certainly does not account for the full extent of Arendt’s ambivalence about administration, but it does suggest a way to understand several of her positive statements about government. And, it suggests that Arendt’s intervention, the intensity with which she at some points rails against administration, is guided by her belief that this is where an intervention is most needed. In her view, it is political freedom, and not administrative ability, that is most threatened. Her willingness to chide the inability of governments to carry out tasks like garbage collection demonstrate her view that both sides of public life sometimes require attention.

Another way to assess the results of the preceding analysis is to reflect upon the

way it illuminates current debates about the status of public administration. The important point from this perspective is not how Arendt and Habermas differ on this question, but how the lines of argument they develop shift the terms in which one describes administrative power. Two examples can help show this potential.

First, on the question of the appropriate way to view the relationship between politics and administration, Arendt and Habermas turn attention away from the institutional terms in which the debate is so often cast. While the institutional boundaries are important for both authors, they must give way when important interventions are left outside them, and the focus of both authors is on how one should understand political action outside the categories of political institutions.

With regard to Habermas, for instance, one can see how arguing against conforming to institutional boundaries, when such arguments are made on the basis of complexity, can disguise an anti-democratic expert administrative power. In the context of recent debates over the enhancements of executive authority, following the events of 9/11 and the wars in Afghanistan and Iraq, the question that has been asked is whether such delegations are appropriate in times of crisis. Some have argued that the “crisis” of 9/11 was simply the latest in a series of events and conditions undermining the outdated institutions of a simpler time. These arguments are accompanied by a feeling that calls for the integrity of institutionally divided power often come at the cost of effectiveness in dealing with them, especially while crisis-like conditions prevail in international sphere and in the domestic sphere trying to cope with the ways the international sphere limits its choices. Following this rationale for executive authority, terrorists, like global warming,



present challenges that exceed the potential of democratic and divided governments to deal with them.

From this latter perspective, the question of whether particular delegations of power are appropriate is itself a relic of past, less complex times, and discussions of the non-delegation doctrine seem a luxury. For example, in a discussion of the surprising and short-lived revival of the doctrine in 1999, the New York Times called the doctrine “quaint” and “arcane” (2000) because it overlooks the “complexity” of the post-New deal economy and government.

Habermas tries to avoid such a response by situating discussions of executive discretion within the horizon of an increasingly rational decision making process that focuses both on legitimacy and effectiveness by finding a way of justifying administrative power that arises from anonymous sources. On one hand, Habermas agrees that one should not dogmatically insist upon institutional integrity because this leaves one ill-equipped to deal with global problems, and to critique the institutions that impeded global problem-solving. But, on the other hand, Habermas thinks that institutional separation reflects an important functional differentiation in argumentation to which the focus should be shifted. From this perspective, a different set of questions emerges about whether public spheres are in place around agencies, and whether, when normative decisions must be made by administrators, a network is in place to provide the proper argumentation.

Arendt’s work also turns attention to this extra-institutional participation, but she would disagree with Habermas’s criteria for when such interventions are acceptable, and with the telos of rationalizing decision making in the context of which his criteria are set.

This contrast emerges from the fundamental difference in how the two authors conceptualize the relationship between politics and administration - where Habermas views the two as different moments in the same political process of increasingly rational decisionmaking and implementation, Arendt views the attempt to “keep the world” through administrative acts as an important human endeavor that runs alongside political life.

A second example of a current controversy that can be shifted from the perspective of a contrast between Arendt and Habermas is the question of the appropriate place and shape of expertise in the implementation of public policy. It is no secret that for some very salutary policies, an element of nonpublicity and expert authority contributes to success. This poses a challenge to approaches, such as Habermas’s, for which publicity is the essential core of law, and suggests that the anonymous subject may play the role of expert. From Arendt’s perspective, the concern shifts from “publicity” to how to orient oneself toward the “fait accompli.” Understanding the administrative apparatus of government as a profession concerned with improving the world rather than as a tool of a sovereign public allows an appreciation of the positive role of government as well as the special vigilance required in light of the limited legitimacy of every administrative policy. Because the approach draws attention to questions of policy reversibility and different meanings of “improvement” rather than progress, it offers a framework for judging cross-jurisdictional dissent and cooperation unavailable within the conceptual universe of limited discretion.

In the end, Arendt’s approach does not suggest resisting administration and favor

“pure politics” no matter what the social consequences, nor does Habermas’s approach amount to forsaking freedom in the face of law and its legitimate implementation. They do have different senses of the dilemmas modern society places in front of its citizens, however. In her reflections on modern culture, Arendt refers to the tension between purely political and purely fabricating faced by the humanist:

This humanism is the result of the *cultura animi*, of an attitude that knows how to take care and preserve and admire the things of the world. As such, it has the task of arbitrating and mediating between the purely political and the purely fabricating activities, which are opposed to each other in many ways. As humanists, we can rise above these conflicts between the statesman and the artist as we can rise in freedom above the specialities which we must all learn and pursue (BPF,225).

The answer to both Habermas and Arendt can be to see administrators in a good government as humanists. So that policy designers, recipients, dissenters, and even resisters are considered implementers and participants in the effort to keep our world.

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10/21/03

### **EDUCATION**

Ph.D. Political Science, The Johns Hopkins University, October, 2003.

(Primary advisors: Dr. Richard Flathman and Dr. Matthew Crenson.)

M.A., International Affairs/Public Administration, George Washington University, 1990.

B.A., Political Science/French, University of South Florida, 1987.

### **TEACHING EXPERIENCE**

Adjunct Faculty, "Gender and Politics," Longwood College, Fall, 2001.

Adjunct Faculty, "Introduction to Public Administration," The University of Virginia, Fall, 2001.

Dean's Teaching Fellow, "Self-Interest and the Politics of Identity," The Johns Hopkins University, full-credit course taught during intersession, January, 2001.

Guest Lecturer, "Culture, Economic Change, and University Education," Dr. Martyn Thompson, Tulane University, Spring, 1999.

Teaching Assistant, "Introduction to American Politics," Lecturer for three sections, Dr. Benjamin Ginsberg, Fall, 1997.

Teaching Assistant, "Theories of Justice," Dr. Richard Flathman, Fall, 1995.

Resident Management Trainer, selected for national training team on new Public Housing management and rehabilitation rules. U.S. Department of Housing and Urban Development, (sessions in Chicago, Philadelphia, Washington, D.C., Oklahoma City, San Francisco, Atlanta), 1992.

### **PUBLICATIONS**

"Constructing Civil Space: A Dialogue," with David John Farmer, Ralph Hummel, Sandra Kensen, Cheryl Simrell King, and Camilla Stivers. Administration and Society. March, 2002.

### **CONFERENCE PRESENTATIONS**

"Hannah Arendt on the Administrative Tasks of Good Government," Proposal Accepted, Western Political Science Association Meeting, Portland, March, 2004.

"Administrative Coercion At Home and Abroad: Habermas's Finesse of Irreconcilability and Irreversibility," Midwest Political Science Association, Chicago, April, 2002.

"Rereading Hannah Arendt on Bureaucracy, Administration, and Associations," paper delivered at the 1999 Annual Meeting of the American Political Science Association, Atlanta, Georgia, September 2-5, 1999.

"Self-Interest, Civil Society, and Administration," paper delivered at the 1998 Annual Meeting of the Southern Political Science Association, New Orleans, Louisiana, October 28-30, 1998.

Participant in "Assessing Arendt: A Roundtable of New Voices," at the 56th Annual Meeting of the Midwest Political Science Association, Chicago, Illinois, April 23-25, 1998.

"Habermas, Arendt, and Administration in Public," paper delivered at the 1998 Annual Meeting of the Western Political Science Association, Los Angeles, California, March 19-21, 1998.

"Working the Line Between Politics and Administration: Housing Integration in Baltimore," paper delivered at the Vocations of Political Theory Conference, Baltimore, Maryland, February 27-28, 1998.

### **SYMPOSIA**

Convener of Public Forum, "Welfare Reform, Workfare, and Job Security: One Year Later," with Frances Fox Piven, Fred Mason (Local 1199), and Rev. Doug Miles (Baltimore United in Leadership Development), JHU School of Hygiene and Public Health, Baltimore, Oct. 30, 1997.

Organizing Team, JHU Graduate Representative Organization, Spring Symposium, "The Power of Words and the Quandary of Political Correctness," April 22-27, 1996.

Organizing Team, JHU Graduate Representative Organization, Spring Symposium, "The 'Republican Contract With America' and the Nation's Future," April 24-29, 1995.

### **HONORS/FELLOWSHIPS**

Dean's Teaching Fellowship, The Johns Hopkins University, 2000-2001.

Departmental Fellowship, The Johns Hopkins University, 1994-1998.

Presidential Management Intern, U.S. Department of Housing and Urban Development, Washington, D.C., 1991-1993.

### **RELEVANT WORK EXPERIENCE**

Housing Policy Specialist and Presidential Management Intern, U.S. Department of Housing and Urban Development, Washington, D.C. and San Diego, CA, 1989-1994.

Research Assistant to Dr. Ernesto Laclau, Woodrow Wilson International Center for Scholars, Washington, D.C., 1989.