

**THE PUBLIC INTEREST IN PUBLIC ADMINISTRATION: AN
INVESTIGATION OF THE COMMUNICATIVE FOUNDATIONS
OF THE PUBLIC INTEREST STANDARD**

A Dissertation

by

SARA RENE JORDAN

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of
DOCTOR OF PHILOSOPHY

May 2007

Major Subject: Political Science

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Approved by:

Co-Chairs of Committee,	Cary J. Nederman Kenneth J. Meier
Committee Members,	Elisabeth Ellis Kim Q. Hill William F. West
Head of Department,	Patricia Hurley

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ABSTRACT

The Public Interest in Public Administration: An Investigation of the Communicative Foundations of the Public Interest Standard.

(May 2007)

Sara Rene Jordan, B.A., University of South Florida

Co-Chairs of Advisory Committee: Dr. Cary J. Nederman
Dr. Kenneth J. Meier

The public interest is the highest standard for bureaucratic action in American government. While the importance of this standard ebbs and flows in the literature, the eminence of it remains unquestioned as the North Star for the American ship of state. As the highest standard in American politics and policy, this standard must be formed democratically. In this dissertation, I examine the formation of the public interest standard through the lens of citizen-bureaucratic communication, using the theory of communicative action advanced by the contemporary German social and political philosopher, Jürgen Habermas. I support the use of such a theoretical framework in America by examining the importance of communication for the American pragmatist philosopher, John Dewey. I examine the ramifications of communication in the American democratic state as foundational for the formation and continued expression of the public interest throughout the institution of the American executive branch.

DEDICATION

To my parents, natural, in law, and *in loco*

ACKNOWLEDGEMENTS

I dedicate this dissertation to my parents, both natural and *in loco*. I owe a great debt to my parents, Colette Smith and Richard P. Smith, Jr., as well as to Robert F. Jordan. In addition, I will be forever grateful to the tutelage, attention, friendship, and boundless patience of Drs. Ken Meier and Cary Nederman. I am similarly grateful to Drs. Kim Hill, Patricia Hurley, and Lisa Ellis for their friendship, time, and service. I am similarly grateful to Drs. Arnie Vedlitz, Domonic Bearfield, William West, Ed Portis, and Vesna Danilovic for their assistance at various points in this process.

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CHAPTER I

INTRODUCTION: THE PUBLIC INTEREST IN PUBLIC ADMINISTRATION AND POLITICAL THEORY

“... the basic problem of democratic polities [is] how to make legitimate decisions for the society as a whole in the face of fundamental disagreement (Guttmann and Thompson 2004, 14).

Public administration and political philosophy stand together as partners in the explanation of the form and substance of political life. Yet, in the history of both subsections of the larger discipline of political science and political theory, there is a bifurcation of the two. The study of political life through the lens of the politics administration dichotomy neglects the fullness of politics as a lived experience of community. Politics is the essence of public administration; public administration is the form of politics. We cannot have one without the other. This much is implied by both Hamilton and Guttmann and implied in works from Mill (2002); Marsiglio of Padua (see Nederman 1995); Locke (1979), Rousseau (1954; 1962); Rawls (1999b, 2001); Strauss ([1959] 1988), Habermas (1998 in particular); Wamsley and Wolf 1996), Wilson

This dissertation follows the style of the *American Political Science Review*.

(1941); Fischer (2003, 2005) ; Forester (1993, 1995); Goodsell (1994); John of Salisbury (1990), Christine de Pizan (1994, 1999); Averroës (1966), Al-Mawardi (1996), Confucius (1967) and Sun-Tzu (1963).¹

There is, to the best of my knowledge, no theory, or philosophy of politics that lacks a theory of administration. Those political writings that consciously deny the role of administration are, in sum, self-delusional or not political. Even Strauss, certainly no advocate for the seemingly base nature of political practices in his day, must agree with the necessary role of administration in politics.²

Philosophy, as quest for wisdom, is quest for universal knowledge, for knowledge of the whole. ... Philosophy is necessarily preceded by opinions about the whole. It is, therefore, the attempt to replace opinions about the whole by knowledge of the whole. Political philosophy will then be the attempt to replace opinion about the nature of political things by knowledge of the nature of political things. Political things are by their nature subject to approval and disapproval, to choice and rejection, to praise and blame. It is of their essence not to be neutral but to raise a claim to men's obedience, allegiance, decision, or judgment. One does not understand them as what they are, as political things, if one does not take seriously their explicit or implicit claim to be judged in terms of goodness or badness, of justice or injustice, i.e., if one does not measure them by some standard of goodness or justice.... If political philosophy wishes to do justice to its subject matter, it must strive for genuine knowledge of these standards. Political philosophy is the attempt truly to know both the nature of political things and the right, or the good, political order ([1959] 1988, 11-12).

Reflecting on classical political philosophy's orientation to the pronouncements of the best regime (to include the "form of state, form of government") Strauss insists that we

¹ This list is certainly incomplete. See Raadschelders (1998) for more extensive lists and summaries of administrative theories around the world. See Nederman (1993) for more attention to the works of John of Salisbury and Christine de Pizan. See Nederman (1995) for more attention to the works of Marsiglio.

² Note the tracts that Strauss offer on social science, of which the study of public administration in Strauss' time was explicitly a part. In particular, see "Social Science and Humanism" in Strauss 1989, 3-12, but importantly 5-6.

cannot know politics philosophically without understanding the full role of political actors and institutions that make up politics. Indeed, the role of the public official cannot be defined without apprehending his knowledge of true political philosophy, in which the correct ordering and administration of the state plays a paramount part. The task of political philosophy, like the practice of diplomacy, cannot be divorced completely from the study of political administration.

With this in mind, the question: what is the use of present political theory for the study of administration? Moreover, more critically, can an administrative rereading of these texts revise their status—move them from political thinking to political philosophy?³ Regarding the first question, the history of the study of public administration in the Atlantic corridor (particularly the American side) has followed a course dictated by the changing political realities of the times as well as the changing attitude that the field of political philosophy, and later political science, has exhibited towards the study of public administration. As Dwight Waldo, in *The Administrative State*, makes clear:

one should know that political theory and public administration are in a sense at opposite ends of a political science spectrum, with political theory being the part of political science most oriented toward values and methods indicated by such terms as humanism and liberal arts, and with public administration most oriented toward business, technology, and—by ambition if not achievement—science. ... But—intriguing paradox, delicious irony—[public administration] a movement that deprecated ivory-tower theorizing, that sought to bracket political theory if

³ Political thinking/ political thought: "... finds its expression in laws and codes, in poems and stories, in tracts and public speeches *inter alia*... (Strauss [1959] 1988, 12)." "A political thinker who is not a philosopher is primarily interested in, or attached to, a specific order or policy... (Strauss [1959] 1988, 12)."

not to abolish it, proved on examination to be implicitly, and occasionally explicitly, engaged with political theory (1984, x-xi).

Often the citation of political theorists' concerns in the realm of public administration were quashed as moralizing or shuttling values in through the back door, while the exposition of the matters of governance in political theory were chided for failing to appreciate the true nature of political theory as reflection. The tension between the two provoked divergence to the point that the innovations of the original *Minnowbrook* conference or *Blacksburg Manifesto* were indeed radical (Marini 1971; Wamsley et al 1989). The radical nature of the re-commitment of political theory to public administration (or is it the other way around?) speaks to the answer to the question above. The usefulness of political theory to public administration is to highlight those sections of, particularly historically minded, political thought which clarify the meaning—the essence, if not the form-- of administrative practice.

Waldo (1984) accomplished such a clarifying mission in his seminal work, *The Administrative State*. Yet, the commitment of avowed public administration scholars to political theorizing did not start in 1948, the date of the original publication of *The Administrative State*. Waldo may lay claim to the innovation of “admitting it”, but he was one in a line of administrative thinkers to offer some theoretical insights of significant value. Waldo sought to explicitly connect the two, but before him were scholars such as Cleveland (1913), Herring (1936) and Kingsley (1944) that connected the two in other, more implicit ways. These works were formative for the work of Waldo and later scholars, such as Long (1962), Frederickson (1997), Mosher (1978), Rohr (1986, 1989, 1998, 2002) and Wamsley, et al. (1989) and Wamsley and Wolf

(1996). Despite the path-breaking work undertaken by these scholars, there was little attention from professional political theorists to the treatment of such key issues as representation and the organization of democracy by scholars confronting administrative questions. Instead, political theory, once disengaged from the questions of administration, declined as an endeavor of political engagement and value.⁴

This leads me to the second question above: can an administrative rereading of political theory-without-administration revise the status of political theorists from being political thinkers to political philosophers? To the extent that we can identify the administrative realm as that of engagement in politics and political practice, it may be that the salvation of a currently disengaged political theory *does* lie with the resurrection of the administrative as area of valid concern. Note the lament and admonition of Gunnell (at some length (1993, 277)):

By the end of the 1980s, the principal conversations in political theory ceased to speak about actual politics, let alone to it. To a large extent, they became tributaries of the dominant academic persuasions such as postmodernism and reflections of debates such as that about philosophical foundationalism that permeated the humanities and social sciences. This was now less a search for philosophical grounds to underwrite theoretical intervention than a function of academic conformity. Even when an aspect of political theory had a distinct practical-issue counterpart and constituency, it was difficult to resist the attachment to the tokens of academic authority and the siren of esotericism and to speak in a manner that was not opaque to all outside the academy or even those standing outside the specialized language of subdisciplines.

From Willoughby (1923) to Wolin (2004), the concern had been to secure the autonomy of political theory predicated on the autonomy of politics and find an answer

⁴ Of particular interest is Gunnell's attention to the career of Francis Leiber (1875) (pages 24-32) and the affects of disengagement with politics upon the political theory of Leiber and his contemporaries. Leiber, as author of the *Manual of Political Ethics* is of interest to scholars of public administration ethics.

to its articulation. Yet, now, much of political theory represents a diverse world of specialized and derivative forms of scholarship, in which neither inquiry, nor its object have any clear identity and in which textual criticism and the presentation of self in professional circles constitutes a form of political action. Both political theory and politics had become abstract intangible entities that rendered otiose any attempt to engage in a concrete discussion of their connection. Reinstating the concern, rediscovering the nexus of politics and political theory through the examination of the administrative is the object of the remaining text—though I fall victim here to much of what Gunnell laments as professionally disengaged political theory.

It is with this objective that I have selected, partly consciously and partly through the accidents of the unconscious, those texts to rely on to elaborate an administrative theory of democratic legitimacy.⁵ Specifically, I choose those thinkers— Cooper (1991, 1998), Dewey (1927, 1948, 1961), Habermas (1981, 1984, 1990) Herring (1936), Long (1962), Waldo (1984), Young (1990, 1999, 2000)—who consciously engage themselves (in their texts if not their lives) with the practice of politics as well as the practice of thinking about politics. There are other scholars' works that may belong here, but the selection of these works is purposeful, as the authors' thoughts dominate throughout.

In many ways, I see that these authors share a similar objective in their writings. Particularly, each seeks to know what it is—those thoughts, practices, procedures, moments—that makes democracy a legitimate, and truly good, form of governance in

⁵ The notion of a text choosing one rather than one choosing a text is not original to me, I draw from a conversation I had with Roxanne Euben at the Annual Meeting of the American Political Science Association, 2005.

the modern state. Certainly, Habermas' work, particularly that after the "communicative turn" is illuminating for this project. Likewise, the work of Dewey on democracy and the interaction of education, communication and social action, sheds light on the importance of a democratic orientation to the inquiries of life in the contemporary state. Drawing upon Young, I use the projects of Habermas, Dewey, and Long to form a synthetic notion of representation in a just democracy. From Long, I take the importance of an Aristotelian "walk-about" method for forming a theory of the administrative state in a democratic system emerges with little acknowledgement of theoretical perspectives that do not take democracy seriously. From Cooper, I extract a theory of complete democratic citizenship, one that takes as given the importance of the role of the practicing public administrator for the performance of citizenship in America. Finally, from Herring, I draw one of the key insights that hold the remainder of the text together, namely the importance of the public interest as a democratically legitimated standard for public administration in a democracy. It is from this starting point that I attempt to synthesize a theory of democratic legitimation that incorporates the role of public administrators throughout the process of governance.

Though the primary task of the work is to develop a theory of democracy, there are many tributaries and side-roads taken. The reader will note that I delve into the analysis of communication, particularly Habermas' theory of communicative action, at length in places. Readers may also note that, while I dive into the depths of particular theories, I skim over others. I do this for reasons of practicality—time, space, coherence, and patience are limited. Specifically, while I make empirical claims at

points, I do not undertake extensive analyses of the data that may support these claims fully. Often this is because it is my sense that I am citing truisms. Additionally, I may glance over a theory or a concept without thoroughly explaining it; those common symbols—the content of our common sense—is not the point of exposition here. The point here is the construction of a theoretical framework for resolving the problem of illegitimacy in the practice of government, any points where I may have strayed are accidental, and any points of true synthesis between public administration and political philosophy, fully intentional.

CHAPTER II

TOWARDS DEMOCRATICALLY ORIENTED INTERESTS

The importance of the public interest as a commendatory standard for government action pervades much of the twentieth century literature on government. As Pendleton Herring suggests in his work *Public Administration in the Public Interest* (1936), invocation of the public interest as a standard for action is crucial to the reconciliation of administrative action and the American democratic ideal. For Herring, the intractable problem of reconciling bureaucracy with democracy hinges on the satisfaction of the democratically defined public interest by the bureaucracy. Specifically, to reconcile the actions of a non-elected branch of government with the idea of full citizen control of government, Herring proposes that administrators follow the public interest as the ultimate standard of goodness in their daily decision-making.

Such sentiments for the importance of the public interest are not new to the thought of Herring. The importance of the interests of the public for the definition of a standard for democratically legitimate action taken on the part of institutions of government is an American democratic concern emanating from the early Federalists and anti-Federalists alike, through the thought of the populists and into that most American of philosophies—pragmatism. The public interest occupies a paramount position in American thought on the democratic defensibility of government. In fact,

echoing Dewey, we may say that the pursuit of the public interest is the very task of democratic government in America.⁶

Herring, following a particular strain of Dewey, elaborates extensively on the many forms that an appeal to the public interest may take in a complex democracy.⁷ Regrettably, though, he leaves open for the reader a crucial step in the reconciliation of bureaucracy with democracy. Specifically, he does not describe the role of the public interest in this project. Herring leaves underdeveloped an argument for the means of creation for a democratically legitimate public interest. He resigns to the reader's estimation alone that the public interest is a standard that is democratic in nature. In doing so, Herring follows the common tendency among later scholars of the public interest to leave public interest formation woefully under-articulated in much of the literature on the topic. It is the intent in this chapter to lay the foundation for the purpose of the public interest as the highest standard to which public administrators ought to appeal in their decision-making processes.

Despite the clear and continuing centrality of the public interest for political and administrative theories of action, ethics and citizenship, a perplexing hole remains in

⁶ Such a sentiment we can find in many places in Dewey's extensive thought, but it is most obvious in his elaboration on the differences of aristocratic and democratic government in *The Ethics of Democracy*. "Democracy does not differ from aristocracy in its goal. The end is not mere assertion of the individual will as individual; it is not disregard for the law, of the universal; it is complete realization of the law namely of the unified spirit of the community. Democracy differs as to its means. This universal this law, this unity of purpose, this fulfilling of function in devotion to the interests of the social organism, is not to be put into a man from without. It must begin in the man himself, however much the good and the wise of society contribute" (Dewey 1993, 61).

⁷ Herring himself does not identify himself as a pragmatic thinker. However, the belief that Herring demonstrates throughout the work in the educative purpose of public administration and the importance of the public and its interest for the maintenance of democracy is similar in many important ways with Dewey's thinking on the purpose of governing institutions for democracy as practice and idea. A more extended analysis of the pragmatic elements of Herring's work is beyond the scope of the present argument.

many articulations of the public interest. From “scientific” or management perspectives given by Schubert (1960, 1962) and Sorauf (1962), to philosophically inspired analyses offered by Flathman (1966), Held (1970), Oppenheim (1981) and, (in part) Herring (1936), many scholars of the public interest treat the concept as a fact of democratic decision-making and governance. Through the medium of deontological ethics (Thompson 1987) or constitutional oaths (Rohr 1978) or administrative conservatorship (Terry 2003), the idea of a public interest returns as a “north-star” for navigating the ship of the administrative state. Although, the language of such chapters suggests that the satisfaction of the public interest ought to serve as the gold standard for administrative actions, the pathways to the public interest and the democratic necessity of a public interest remain the judgment of the reader. Within public administration texts, as Schubert (1957, 346) notes, a brief section is often added to the end of textbooks concerning the topic of administrative ethics and/ or responsibility. Furthermore, not since the seminal piece by Herring, published seventy years ago, has any administrative theorist directly confronted, however nominally, the relevance and importance of this standard for administrative ethics and practice.

The extensive interrogation of concepts, such as the public interest, as concept is beyond the conventional scope of work for most contemporary administrative theorists.⁸ Nevertheless, by neglecting the role of thoughtful analysis of the public interest concept and its formation in complex constitutional democracies, administrative theorists seeking

⁸ Certainly, many of us hold Dwight Waldo to be the first (and often last) proper normative administrative theorist of the philosophically reflective tradition. Others, such as Carl Friedrich have followed Waldo and, as I will suggest later in this work, done a better job at founding public administration theory in the political philosophy tradition.

to reconcile bureaucracy and democracy,⁹ or to refound the legitimacy of the administrative state,¹⁰ continue to neglect an important theoretical link.

It would seem a truism that studies of public administration should have an active and distinctive conceptualization of the administered public. Particularly as regards the public interest, a critical component of the concept is the account of the interests of the public. It is the definition of the public and its role in the ideal democracy that compels the administrative theorist to reexamine the thought of Dewey:

The public is organized and made effective by means of representatives who as guardians of customs, as legislators, as executives, judges, etc. care for its special interests by methods intended to regulate the conjoint actions of individuals and groups. Then and in so far, association adds to itself political organization, and something which may be government comes into being; the public is a political state (1927, 257).

An incorporation of the association of multiple forms and means of democratic participation widens the scope of participatory accountability within the democratic government context. To elaborate, if the public interest is formed as a legitimate democratic process accounting for the voiced interests of all, then all persons participating in the formation of the public interest exercise some degree of control over the administration of their political will. Accounting for the formation of the public interest as democratic process of association and community deliberation, the tension of bureaucracy versus the demos—who controls whom—is resolved through channels of

⁹ The number of scholars who have sought to reconcile bureaucracy with democracy is prohibitive of full cataloging, however a few notable names should be referred to here: Rourke (1986), Meier (1993), West (1995), Wood and Waterman (1994), Behn (2001). The public interest is not a central concept for these scholars.

¹⁰ This is the explicit project of the Blacksburg School of public administration (Wamsley, et al. 1989 and Wamsley and Wolf 1996). Interestingly however, the matter of the public interest does not garner significant attention in either of these works.

citizen mediation directly, not channels of instrumentally rational “control” by representatives divorced from the face-to-face association.

The pragmatic preference for normative controls versus (for example) transaction cost or balance of power controls (Epstein and O’Halloran 1999; West 1995) impinges on the assumptions put forth in the later, positivist, public administration literature. Specifically, the power of normative suggestion defies empirical quantification or analysis and the implicit rationalization of efficiency supposed within. As such, the importance of executive/ legislative machinations as instruments of “control” falls to the wayside (McCubbins, et.al., 1989; Moe 1984).

Though it would be simple to accuse the positivist leanings of the students of public administration of promoting a non-normative account of democratic control of the bureaucracy, additional sources may be more blameworthy. Specifically, the “conceptual muddle” that is the public interest as concept and standard contributes, as do the shifting preferences for bottom up versus top down democracy. The reliance on normative mechanisms of control, one would think at first blush, is contradictory to the principle of representative government and the democratic control of the bureaucracy by political principals (i.e., neutrally representative legislators). Such conclusions persist in much of the later public administration literature (Finer 1941; McCubbins, Noll and Weingast 1989; Bendor 1988; Epstein and O’Halloran 1999, Wood and Waterman 1994). Yet, through attention to Dewey’s thought on democracy and communication, as well as Habermas’ theory of communicative action, it is possible to reconstruct a more synthetic notion of citizen’s participation in the normative formation of government that

accounts for the notion of political control by the synthesis of both principals (elected representatives) and citizen's interests.

Interest Formation and the Role of Economics

As it stands, there is no general theory of interests that can account fully for the public and political nature of the desires of men.¹¹ Indeed the question arises, would we want a complete theory of interests? Would such a theory produce any value for the study of politics as idea and practice? In short, I would suggest the answers would be “no” in both respects. A general theory of interests supposes a general and complete theory of man, an exercise that would likely resolve itself through reductivist assertions, metaphysical gyrations, or overly complex machinations defending relativism. The problem of interests, like the problem of a public, necessitates a pragmatic perspective.

Particularly within contemporary political science scholarship, the role of economically quantifiable wants as proxies of political interests is undeniable. Whether speaking of citizen's self-interests, individual interests, group interests, or the interests of political principals, the economic model is the most influential. Basic tenets of the economic model of interests are that the definition of interests occurs through the socially isolated estimation of individual utilities and the internal cost-benefit analysis of pay-offs for players in an exchange system (Laver 1981).

¹¹ From the perspective of rational choice theory, accounting for the interests of men occurs only if we accept a theory of man as socially isolated and imbued with self-interested desires *ex nihilo*. Note Laver (1981, 21)

In modern political and economic theory, relying on the *homo oeconomicus* model of Adam Smith in particular, interest calculation necessitates derivation of individual economic utilities. Simply put, this theoretical framework supports the conclusion that all interests are self-interests. Although Graham (2004) and others (Seglow 2004) have attempted to define an impulse towards non-economic self-interests altruism for example, many of their justifications are themselves predicated on expanded use of the economic model. Economic models of interest calculation, then, would seem to be unavoidable in explanations of politics and the public interest (Hirschman 1977).¹²

The foundational theorists of liberal economy and interests (Jeremy Bentham, John Stuart Mill, David Ricardo, Adam Smith; see Fusfeld 1999, and Grampp 1948, 1965), describe the interests bearing political man as the expression of self-interests born in isolation and confirmed in society. In their classic articulations, because all men¹³ are individuals by natural cognizance and liberty, only they themselves may accurately reflect upon, and importantly satisfy, their specific wants, desires, and needs. Yet, even they give way to the difficult task of fully atomizing the economic man; the individual of political economy is not strictly an atomized or anomic individual. As Smith (1976) certainly makes clear, without the imposition of the values of society, man cannot know economy itself, much less his own identity as such.

¹² Much of the analysis here is drawn from the contributions of Grampp (1948, 1965), Fusfeld (1999) and O'Brien (2004). This is not a careful study of interests but is a survey of those economists whose works are most relevant, or often cited, within the public interest literature.

¹³ The use of the term man is certainly outdated in the contemporary political theory genre; however, in the discussion of historical texts, the use of the term man is entirely appropriate. As Skinner 2002 suggests, we must be cognizant and respectful of the historical situation of our authors if we are to render a valid critique of them. To this end, I would argue that we must use the term man, however unfashionable, here. Nevertheless, for an assessment of the economics of the private interests of women, see Elshtain 1993.

Despite the reductivist, methodological individualism in contemporary economic liberal (rational choice) thought, an economic theory of self-interest not solipsistic. Moreover, because it is not completely devoid of all social pretenses, the assumptions can become political. All persons construct their interests with respect paid to perceptions of others' estimations of their validity and utility as well.¹⁴ Man, is self-interested as a natural animal, but other-regarding as a social animal in his formulation of interests. According to the liberal economic model, forces of nature and society construct men and it is the project of a society to enforce norms and morality in order to make man into a livable character. The livable man is naturally motivated towards production of privately and publicly useful goods, though it may be anachronistic to aim one's productive forces towards the later (Laver 1981, 18). Economic men have an economically and politically defined teleology to their lives—improved lives lived individually through improvement of their production held in common. That is, the economic man is bound by nature to the production of better and better goods and services which would culminate in the ideal society of producing ideally economizing individuals, regulated only by the forces of a free-market (that is unfettered by government interference of almost all sorts). Smith notes, in the *The Wealth of Nations*, the tendency of man towards the model of an individually progressive, self-interested man:

¹⁴ The expression of wants and needs in terms as of validity and utility are basic to the satisfaction of Habermas' standards of communicative action. Therefore, another supporting argument could focus on Habermas' preoccupation with interest held in common based on the linkage between communicative action and two expressions of economically valid arguments.

The uniform, constant, and uninterrupted effort of every man to better his condition, the principle from which public and national, as well as private opulence is originally derived, is frequently powerful enough to maintain the natural process of things toward improvement, in spite of both the extravagance of government, and of the greatest errors of administration (quoted in Fustfeld 1999, 29).

Smith rejected the notion of the fully atomized man as much as he rejected the idea of a government in full control of the economy. Therefore, the conclusion persists that he did not reject the idea of a public interest so long as the public's interest lied with the pursuit of individual economic progress.

Interests defined simply as self-interests, which are entirely private and individualistic in their bases, is not an assumption that Dewey borrows from Smith.¹⁵ For him, there was little room in the economic theory of individual interests for the intercession of others, including political representatives, in the elaboration and satisfaction of an individual's interests. This, Dewey noted, is problematic for political democracy.

Dewey's contention with the economic model of interests is rooted in his definitions of both individual and interests. For Dewey, the individual is not isolated from the forces of others:

In its approximate sense, anything is individual which moves and acts as a unitary thing. For common sense, a certain spatial separateness is the mark of this individuality. A thing is one when it stands lies or moves as a unit independently of other things... but even vulgar common sense at once

¹⁵ Interestingly, the voluminous literature on the definition of the private and the public often suggests that self-interests are economic. Benhabib (1992) suggests that there are three types of explicitly private concerns: "the sphere of moral and religious conscience", "privacy rights pertaining to *economic liberties*", and "the intimate sphere" (emphasis hers).

introduces qualifications (186). ...we have to qualify our approximate notion of an individual as being that which acts and moves as a unitary thing. We have to consider not only its connections and ties, but the consequences with respect to which it acts and moves. ... an individual whatever else it is or is not, is not just the spatially isolated thing our imagination inclines it to be (1927, 187).

For Dewey, the socially and spatially isolated individual devising his or her interests separate from the world around him or her is fictive. Consequently, all individuals share common interests, and define those interests in a common language of experience. In particular, interests arise through the commonality of experience, including that with the state itself.

Only the exigencies of a preconceived theory would confuse with the state that texture of friendships and attachments which is the chief bond in any community, or would insist that the former depends upon the latter for existence. Men group themselves also for scientific inquiry, for religious worship, for artistic production and enjoyment, for sport, for giving and receiving instruction for industrial and commercial undertakings. In each case some combined or conjoint action, which has grown up out of 'natural', that is biological, conditions and from local contiguity, results in producing distinctive consequences—that is, consequences which differ in kind from those of isolated behavior. When these consequences are intellectually and emotionally appreciated, a shared interest is generated and the nature of the interconnected behavior is thereby transformed (Dewey 1927, 26-27).

Interests, like individuals, Dewey argues cannot be defined out of nothing.

Consequently, when speaking of the public and the public interest pragmatically, it is imperative not to speak of either as the mathematical aggregate of individuals and their estimations of utility, cost, and benefit.

Interests in Politics

Yet, it is with a heavy dose of the classical economics that later political theorists, such as Barry (1976), Held (1970), and Oppenheim (1981) are able to expand upon a theory of interests. Barry (1976) describes in *Political Argument* three connotations of the use of interests in political speech. Barry offers that the phrase “x is in A’s interests” can be decoded to mean: “A wants x”, or “x would be a justifiable claim on the part of A”, and/or “x will give A more pleasure than any alternative open to him.” Each of these definitions takes as given that “A” is an individual, not a representation for a group of individuals. Barry goes on to suggest in his own words that, “x is in A’s interests” is code for “A wants the results of x”. The x in question being a policy or action (Held 1970, 21-22). Barry extends the economic liberal argument based on what he terms the want-regarding model of interests. According to Barry, there is a link between want-regarding interests and the individual’s calculus of interests based upon desire. Ideal-regarding interests are those tied to altruistic or truly other regarding, abstract interests based upon apprehension of the social. Although Barry does not wish to reify the methodologically individualist, want-regarding position of many of the economic liberals in his analysis, he does so in the spirit of protecting liberal freedoms of choice and decision over the establishment of an “other-regarding” society.

The interest standards that citizens bring to the public sphere have been conceptualized (in part) by Oppenheim (1981), Held (1970) and the classical and welfare economists. Oppenheim’s construction of self-interest is reminiscent of his construction

of the definition of public interest -- “It is in A’s interest to do X in situation S” (1981, 134). For Held (1970), the most useful definition of self-interest is molded from the previous works of Barry, Locke and Pareto to suggest that self-interests are “an action or policy is in a man’s [sic] interest if it increases his opportunities to get what he wants” (1970, 22). In the construction of the classical economists, what is in someone’s self-interest is what maximizes their satisfaction/ utility for the achievement of a particular goal on a knowable time horizon. Using an amalgam of each of these conceptualizations, we can arrive at the definition of self-interest that shapes the content of relevant discussion material in the public sphere. The definition of the concept of self-interest is an action, utterance, or position (that directly leads to a particular action or utterance with minimal variation in possible outcomes). This interest satisfies the needs or wants of an individual actor and the expression of this interest encode our mutual understanding of the interest as something satisfying. In other words, interests are what motivate us to suggest that something is good or bad for us in the situation we find ourselves in or can reasonably expect to find ourselves in within the knowable future.

In ordinary language, our use of interest-speak is the veneer that covers the expressions of implicit or explicitly standards for the achievement of our satisfaction. This is not to say that our speech in the public sphere is rooted always and entirely in our self-interests alone. In fact, contrary somewhat to the extreme reductivist assumption of some economists that all interests are individual utility driven, I do not suggest that interests are always individually calculated or based on the goal of achieving material

satisfaction. As both Held (1970) and Flathman (1966) point out, we define our own individual interests within a social context that offers us grounding in what is an appropriately held interest and what is mere mania or fantasy. That is, interest expressions can include our expectations for satisfaction of non-rival and non-excludable goods such as psychological satisfaction or the satisfaction of a religious/ moral position. Nevertheless, the basic definition of interests as the expression of expected standards for satisfaction remains.

The translation of interests into the critical public sphere is the statement of citizens' policy preferences or critiques of others' expressed preferences-- the thinly veiled statements that "this policy does (not) satisfy my needs or wants on the time horizon/ in the situation that I find myself in presently". The public interest as policy preference standard suggests the following definition: the public interest is an expression made publicly that a particular policy does (not) satisfy the needs or wants that I perceive to best serve my perception of the needs or wants of those persons directly around me, or whom I can abstractly accept as wanting or needing persons in the future. It is the achievement of feelings/ perceptions of a partnership in an intersubjectively communicating collectivity—the realization of being a constitutive partner in the continued formation of the lifeworld—that occurs through membership in the communicatively acting public sphere. The achievement of these feelings of communicative partnership in the public sphere allows for the potential of an emergent, holistic concept of the public interest as the commonly held interest that supports the institutions that make the communicative lifeworld possible.

A basic definition that I suggested fits this requirement was an analytical one offered by Oppenheim (1981). I, borrowing from Oppenheim, define the public interest as, “it is in the interest of the public P that A’s enact policy X if and only if it is rational for A’s to enact X with regard to promoting the collective welfare of P (1981, 136).” Oppenheim’s original definition is incomplete in a number of ways, mainly with respect to the definition of the public. According to my modified definition that guides this chapter, "P" means the public as a collection of the many publics that make the whole body of persons affected by common public authority.¹⁶ To state more precisely the content of the public P, I use terminology adapted from Appleby (1952) that the public P is: all non-governmental¹⁷ public associations for which the government broadly understood serves to mediate the competition between them (in a non-coercive way). What Appleby alludes to in his definition of the public is the voluntary aggregation associations under the umbrella of governmental public authority, which are part of the full civil society and potential public sphere. These civil society organizations become public through their interpenetration with one another within the context of other semi-public organizations and administrative agencies, the domestic government structure and

¹⁶ Oppenheim’s definition of public P is “any group of human beings where the unity of the group is determined by its organization under a common public authority (1981, 24)” is useful but I believe outdated. As the architects of deliberative democratic theory have pointed out, virtually all members of American society are members of some organization(s) that are oriented towards narrowly or broadly defined public purposes (i.e., churches). Therefore, to put all persons *ab origio* into a public of only governmental authority denies the effect of the secondary layer of civic associational authority and publicity. This, I suggest, we resolve through the incorporation of Appleby’s definition.

¹⁷ In this case, the distinction non-governmental public is interpretable as it is in the international relations literature of a Non-Governmental Organization (NGO) or non-state actor with an influence on the public that is under the authoritative structure of the state. This definition does not evoke however, the notion of the NGO as an actor outside of the state itself (as done in the IR literature). Appleby’s non-governmental actors are within the structure of the state as constitutive and constituting parts.

the international governance context.

To further modify the base definition provided by Oppenheim, if we utilize the plural form of agents “As”, this makes the requirement of “if it is rational for A(s) to enact X with regard to promoting the collective welfare of P” a problematic statement. That is, this definition is problematic to the extent that the agency of all A’s requires 1) an authoritatively legitimate representation of their own autonomous (and their representatives’ autonomous) estimations of welfare and 2) a rational defense according to some mutually agreeable and validated standard.¹⁸ Additionally, their decisions as a collective must then be suitable to stand up to the standards of scrutiny (by the multiplicity of representing and representative agents) for decisions made as an “agency having” actor—government defined as an “A.”

The persistence of individualistic calculations of interests goes beyond the common use of the formula “x is in A’s interests” to characterize the motivations of men in an economy or political system. The individualistic calculus underpins theories of group interests. Groups, in this model, require definition as individual actors in competition with other groups, just as the economic model defines individuals as actors competing with one another. Group interest theories, as political theories of man, take as given fact that man, when in a group, adopts the preferences of his fellows as his own.

The language of Truman (1951) on group interests demonstrates clearly this trend. Truman’s description of an interest group is “any group that, on the basis of one or more shared attitudes, makes certain claims upon other groups in the society for the

¹⁸ By conventional standards of rationality, I mean, goal directed behavior to maximize the actor’s utility for a particular good, defined independently by the actor him/herself.

establishment, maintenance or enhancement of forms of behavior that are implied by the shared attitudes” (1951, 33). Truman, throughout his discussion of group interests, describes the relations of groups to other groups in a manner reminiscent of the economist’s discussion of individual versus individual conflict. Truman, rather than developing a theory of group interest formation, describes group interests as an aggregation of individuals with separate interests, and develops his theory by considering groups as unitary-preference-holding-actors similar to individuals. This, as Niemeyer (1962) reminds us, is a page directly out of the classical economist’s view of man and interest.

This treatment of group interests as the aggregation of individuals’ self-interest is foundational for the logic of later contemporary theories of the public interest. The persistence of economic concerns, particularly those of the classical economists, shapes the better part of our understanding of interests brought forth in almost all sections of political thought. In the fields of political theory and public administration, the basis of calculation of interests rests largely on the theories of utility maximization, the hedonistic calculus, interest aggregation, and an individualized man found in classical economic thought.

In the field of political theory, the persistence of liberalism as a political doctrine ties these two points together. The classical economists, as is often noted, wed to the emerging liberal notion of man, state, and society in their articulations of economic

theory. This merger has not yet been uncoupled.¹⁹ In public administration, economic interests tie not only into the theory of individuality and liberal values, but also into the persistence of efficiency, economy and resource maximization as critical values for the practice of administration in the public interest.

The Public Interest, the Economy, and Representation

As has been suggested by virtually all scholars who have endeavored to describe the public interest or its function, the theoretical development of the concept “public interest” is in a constant state of flux and confusion.²⁰ The public interest is a concept that transcends the barrier of political theory and public administration; theorists on both sides address issues associated with policy formation and implementation, as well the points of Plato and Rousseau. Despite the bridges built by the discussion of the concept between the two sub-disciplines there have been remarkably few “seminal” pieces generative of a suitable definition, useful to both public administration scholars and political theorists.²¹

The multitude of works associated with the definition of the public interest defies definitive classification. For some, the concept of the public interest is critical to the mission of understanding good government (Flathman 1966). To others, the public

¹⁹ However, it is important to point out that communitarians, such as Daniel Bell (1993), also emphasize the importance of economic interests in their appreciation of community values.

²⁰ For an example of the tendency among multiple scholars to note the difficulty of the concept, see Friedrich’s (1962) edited volume *The Public Interest* NOMOS V.

²¹ For the sake of argument, a seminal piece here is one that makes a positive contribution to the understanding of the public interest. A positive understanding is one that includes a definition, distinctly different from platitudes that the public interest is the common good, and critically evaluates previous definitions.

interest is a concept that is better forgotten (Sorauf 1962). To yet others, the concept does not “exist” at all (Bentley 1949). Nevertheless, the extent of the debate on the concept itself suggests that it is a theoretical problem worth further analysis (Zarecor 1959).

Despite the difficulty, an impressive number of classificatory schemes for the public interest persist as guides in the literature. Colm, for example, uses the “metasociological, sociological, judicial and economic” (1962, 119). Schubert (1960, 1962) suggests an adaptation of Leys’ (1943) classification scheme that defines the public interest theories into those of the “rationalists, realists, and idealists.” Cochran (1974) suggests a division of the “normative, abolitionist, process and consensualist” conceptualizations of the public interest.

The debate within the literature on the public interest as concept and as useful for practice obfuscates the continued importance of the concept for democratic theory. Many scholars have developed an argument for or against a particular classificatory scheme or have reviewed the foundations of another theorist’s definition of “interests.” Of the notable contributions, the work of Oppenheim (1981), Held (1970), and Flathman (1966) stands out among the contributions of political theorists, while the works of Herring (1936), Schubert (1957, 1962), Redford (1954), Follet (1918), and Cassinelli (1958) stand out among the contributions of public administration scholars. Though there are some overlapping tendencies in the classificatory schemes and arguments for or against each, the most prominent consistency is the assertion that the public interest is a concept with normative force in the process of decision making in government. It is the

task of the next section to provide a review of these and a synthetic definition drawn from them.

A Closer Review of Two Concepts of the Public Interest

Held (1970) attempts a philosophical reconstruction of the concept of the public interest that stands apart from those articulated by earlier scholars. Her main contention is that the formulation of many of the definitions escapes the rigor of a critically philosophical way-- one that takes the basic assumptions of interests, interest aggregation, and diversity of interests seriously as a way to build a (meta) ethical standard. She posits that such a meta-ethical standard is necessary for resolving the contentions that arise between a descriptive public interest and the political functions of interests for individuals and groups. What she seeks to define as the public interest are the moral codes necessary for the establishment of a political-moral order capable of resolving interest conflicts through a process of validation. To elaborate:

A dispute between a valid claim of public interest and a valid claim of individual interest can only be resolved at a level outside of the political system. A settlement requires a wider system encompassing both, capable at arriving at valid judgments concerning rival positions. A political system cannot ask whether its existence is, itself, in the public interest, since the possibility of answering presupposes a decision procedure which presupposes the political system's own existence. Nor can an individual ask whether his existence is in his own interest, for the same reason. Both, if they exist, can ask if a continuation of their existence is in their own interest (1970, 197).

Held's call for a meta-ethical principle for assessing the public interest is understandable given the seemingly intractable nature of defining the public interest from within the

system itself. Unfortunately, Held diminishes the applicability of her analysis through her insistence on the meta-ethical realm as modal conversation space for solving political interest competitions.

From the perspective of a pragmatic basis for the public interest, it is of little use practically or theoretically to establish a meta-ethical principle, as the consequences of meta-ethical principles are presumably fixed, unassailable, and non-experimental. In short, a meta-ethical appeal eliminates the experience of democracy in the public interest formation and declares that one finds the true public interest in revelatory philosophical procedures. Nevertheless, from the perspective of the work in progress at present, the contribution that Held makes to the suggestion of a public sphere based public interest is notable. Specifically, though the recourse to meta-ethical, validating principles ought not to interfere in a pragmatically motivated context such as public administration, a notion of a public interest developing outside of the boundaries of political institutions through conversation is useful. As Held suggests that we must find a realm removed from politics to resolve politics, the utility of the Habermasian public sphere in its original conceptualization appears promising as location for public interest generation.

Flathman's (1966) contribution is largely a defense of the normative character of the public interest as a commendatory statement used in discourses on the goodness of outcomes and processes employed by public authorities. He suggests,

We conclude that 'public interest' is a general commendatory concept used in selecting a justifying public policy. It has no general, unchanging, descriptive meaning applicable to all policy decisions, but a nonarbitrary descriptive meaning can be determined for it in particular cases. This descriptive meaning is properly found through reasoned discourse which attempt to relate the anticipated effects of a policy to community values and to test that relation by

formal principles. We also conclude that the concept is neither a vacuous phrase nor a verbal device useful for propaganda purposes. It performs a function in political discourse, and it has a logic which, if taken seriously, will influence the kind of policies adopted and rejected and the character of the political process utilized to adopt and reject those policies. A politics which takes the logic of the concept seriously, a politics of the public interest, will differ in significant and predictable manner from a politics which misunderstands or “abandons” the concept (1966, 82)

The nettlesome issues of individual interests and the problem of interest aggregation (according to the utilitarian or aggregative theory (Held 1970, 44-45) are taken up at length by Flathman (1966, 14-53). A conceptualization of the public interest outside of an account of each individual’s stated interests haunts Flathman's work. He suggests that, although the public interest is a common normative standard, public interest generation requires due consideration of the constituent interests of the private individuals.

Where ‘interest’ is used in the sense we have designated ‘subjectively defined self-interest’ (whether ‘selfish’ or not), the public interest would consist of that policy on which unanimity is perceived and expressed among the members of the public. Hence, institutional arrangements capable of canvassing and implementing the wishes of the public would be appropriate. Conversely, where ‘interest’ is used to denote an objectively determined relationship between a person and a substantive, the emphasis would fall on the ascertainment of reliable information about the consequences of alternative policies and the development of trans-subjective criteria of value (1966, 31).

He navigates the difficult waters of a descriptively valid normative, universalizable conceptualization of the public interest by proposing a “politics of the public interest.” In Flathman’s estimation, the politics of the public interest, “... requires that citizens shape their political behavior according to the principles of universalizability and the canons of reason (1966, 43)” and that “for a number of reasons, then, the expressed self-interest of the members of the citizenry has been considered necessary to defining the

descriptive meaning of ‘public interest’” (1966, 37). The importance of the individual’s (or group’s) own interest lies in the politics of the public interest—or how it is actualized by authority in view of the potential consequences of a particular action—rather than in the descriptive meaning of the concept itself.²² The descriptive meaning must come from the calculations of the individual moral agent as to how the public policy or its consequences in question comport with their own, intersubjectively defined conditions of the good in government.

For both Held and Flathman, the concept of the public interest is symbolic of the outcome developed among persons reasonably discoursing on their interests. Consequently, when the term is used, packed into it is the expression of feelings on government and the expectations for politics to assist in the achievement of the best policies for the good life. As has been pointed out above, these expectations include expectations of process. The importance of expectations provokes an analysis of the contributions from administrative theorists and Dewey.

Mary Parker Follett (1918) has articulated the process associated with development of the public interest, in part. The processes that most informed Follett’s work are (predominantly) the creation of a group psychology based on the principles of democratic citizenship, such as equality of participants in political debates held in

²² “We argued that the satisfaction of subjectively defined individual and group interests can be a legitimate part of the public interest, and that “public interest” is a normative concept, the descriptive meaning of which might differ from the expressed interests on any particular issue. To the extent that we emphasize the first criterion, the root of the problem of the public interest becomes interest diversity and conflict in society. The greater the range of expressed interests on any question, the more difficult it will be to find a policy that will satisfy all or any substantial portion of them. ... Purely idiosyncratic and self-serving demands which could not meet the principle of universalizability and the canons of reason would be eliminated” (1966, 44).

common. For Follett, the process of democracy itself is essential to the creation of what she calls the common will. “The deeper truth, perhaps the deepest, is that the will to will the common will is the core, the germinating centre of that large, still larger, ever larger life which we are coming to call the true democracy” (1918, 49). She claims to do this through facilitation of integrative social processes, particularly the formation of groups and organizations via the intersubjective relation of feelings, states, emotions, and needs held in common. It is through this socialization to one another and to the processes of democratic production in multiple venues of modern life that she proposes that the state comes into being. Although Follett does not delve deeply into the problems of language held in common as a foundation for group psychological understanding, it seems clear that the issues of language would arise for Follett’s psychological version of a democratically defined common will.

Tied to the language we use to express our feelings on the goodness or appropriateness of government policy is the concept of the public interest (Flathman 1966, Herring 1936, Cohen 1962, Bell 1993).²³ It is also, by extension, addressed to the effects of public policy, notably its implementation. In *Public Administration in the Public Interest*, Herring makes the case that the public interest should be that standard to

²³ A contention with Flathman’s definition however, is that he fails to extend the purpose of the public interest to judging the outcomes of policy. Rarely, do we speak of the goodness or appropriateness of a policy alone—we speak of the application of policy as being compliant with the public interest. Because of the nature of language with which we describe our normative assessments of policy implementation (rather than simply the language of policy itself), the public interest is a topic of imminent concern to public administration scholars and practitioners. Unfortunately, Flathman’s argument for the commendatory function of the term “public interest” stops short of serving its function for the full spectrum of political action.

which public administrators should appeal in the quest to prevent the evolution of government towards the Calliclean conclusion that might makes right.

The task of government in a democracy, we assume, is the adjustment of warring economic and social forces. The public interest is the standard that supposedly determines the degree to which the government lends its forces to one side or another. Without this standard for judgment between contenders, the scales would simply be weighted in favor of victory for the strongest (1936, 377).

Herring suggests that there is no standard common to each of the branches and each of the competing interest-factions within the American democratic state, save for the public interest. Although he defines the public interest loosely, he does so with an eye towards the importance of conceptual flexibility of the public interest in the face of the evolving administrative state. Because the functions of the government are in a permanent state of flux, crescendo, and adaptation, the public interest must necessarily be as well. Particularly for the task of administering the state, the conceptual objective of administration must remain flexible as more groups enter into, and demand of, the state (1936, 7-9). He does not make the case that the public interest should be a relative standard that has no normative weight. Instead, Herring's definition of the public interest is almost entirely normative:

The public interest is the standard that guides the administrator in executing the law. This is the verbal symbol designed to introduce unity, order, and objectivity into administration. This concept is to the bureaucracy what the 'due process' is clause is to the judiciary. Its abstract meaning is vague by its application has far reaching effects. To hold out the public interest as a criterion is to offer an imponderable. Its value is psychological and does not extend beyond the significance that each responsible civil servant must find in the phrase for himself. Thus, inescapably in practice the concept of public interest is given substance by its identification with the interests of certain groups. The bureaucrat is placed in a situation similar to the plight of Rousseau's citizen. The official, however, must endeavor to act in the public interest, but without the consolation

of testing his judgment in a bureaucratic plebiscite. He must follow his star with but little light on the immediate pitfalls in his path (1936, 23-24).

For Herring, normative weight of the public interest lies within the heart of the administrator and guides his or her day-to-day actions. The public interest in the administrative sphere is not devoid of empirically verifiable existence, but is a subjective measure that requires a sociological understanding of the bureaucratic environment (1936, 25-27). The subjectivity of Herring's formulation of the public interest would agitate later scholars attempting to define the public interest via empirical, "scientific" criterion.

The scientific assessment of the public interest is a project done in parts. The reasons for this lie, as so lamented by virtually all scholars of the public interest, in the difficulty of defining the concept as one specific standard. To define the public interest *in toto* is, as Cassinelli clearly states,²⁴ a matter of defining "human excellence" and the "good life" (1962, 51). The difficulty of definitions of the public interest, as Cassinelli (1962) has related, is the ties to the definition of the good life that the use of the term "public interest" evokes. It is, in a single concept, the standard for theoretical measurement of all political speech and action. Or as Cassinelli also argues,

This standard [public interest], however, cannot be separated from correlative standards for governmental institutions and procedures, and for the traditional social and economic foundations upon which governments rest. Foundations, institutions, and policy are always mutually interdependent... To praise or condemn a pattern of

²⁴ "It is perfectly reasonable to talk about the desirability of a certain policy-making procedure without reference to the public interest, and to argue in terms of a specific interpretation of the public interest without reference to the "good life"; everything cannot be said on every occasion. Nevertheless, the logical connections among these levels of evaluation remain the same. When we approve of a detail of governmental organization, we commit ourselves to an interpretation of the public interest; when we interpret the public interest, we bind ourselves to a conception of the good life (Cassinelli 1962, 51).

public policy is unavoidably to praise or condemn the institutions producing it and the society underlying these institutions. Because of this interrelationship, the ethical standard of the public interest can be applied to all phenomena relevant to politics (1962, 46-47).

Cassinelli's assertion that the public interest encompasses all of politics may seem overstated if we exclude from our calculation the enormity of the administrative task in modern states. However, accounting for the enormity of these tasks and institutions, the assertion that anything could lie outside of politics may seem more radical. That is, all institutions and policies are equally subject to the public interest (a critical standard that people, who have chosen to enter public discourse, can agree upon as the common and common-sensical standards for the goodness of public policy, its implementation, and assessment of consequences). This leaves little room for an apolitical sphere left outside the purview of the public interest.

The expansive nature of the public interest itself guides how we must think of it and, more importantly, how we can capture it in our theorizations of the political. The problem with defining the public interest scientifically, then, is the problem of capturing the totality of means and ends in politics scientifically. Stated in this manner, this standard is impossibly high, even for the most astute of scientifically inclined scholars. The project of capturing the normative character of the public interest is simpler than is the project of scientifically analyzing the concept in sum. Thus, as Schubert (1957), no supporter of the idea of a normative public interest concept guiding administrative action, suggests,

A theory of 'the public interest' in administrative decision-making ought, one supposes, to describe a relationship between a concept of the public interest and official behavior in such terms that it might be possible to collect data for the purpose of attempting to validate hypotheses concerning the relationship. If extant theory does not lend itself to such uses, it is difficult to comprehend the justification for teaching students of public administration that subservience to the public interest is a relevant norm of administrative responsibility (1957, 346).

In Schubert's estimation, the instruction of students in a totalizing or universal conceptualization of the public interest degenerates into the teaching of "administrative Platonism" or administrative tyranny. His suggestions to overcome this are familiar to students of administration, particularly those of Simon—divide the concept of the public interest into its most relevant application for the process of evaluating public administration-- rational efficiency and rational decision-making (Schubert 1957, 1962).

It is in the task of resolving the debate on the normative and scientific, or practical, importance of the public interest that the importance of Dewey's contribution reasserts itself. Well known from the analysis of Dewey's voluminous writings is the notion of a divided world between the normative and the practical, meta-ethical and intentional, self and society, which is foreign to the pragmatic orientation. Likewise, an assessment of Dewey's thought on the (political) public reveals his consistent belief in the unitary nature of the public through the process of caring for the consequence of lived experience.

The public consists of all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for. Officials are those who look out for and take care of the interests thus affected (1927, 16-17).

The only constant [in politics] is the function of caring for and regulating the interests which accrue as the result of the complex indirect expansion and radiation of conjoint behavior (1927, 47).

Dewey's public's interest then can be analyzed *ex ante* and *ex post* in the estimation and accumulation of known consequences of action taken as part of caring for the needs of the public. A pragmatic public interest would be the preservation of the best patterns of social practice (culture as Dewey may say) for attenuating the consequences, whether practical or normative, of lived experience for all persons participating as members of the public. This articulation makes Dewey's public interest sound particularly conservative, but as will be elaborated upon later, there is a particular conserving tendency in the act of many citizens deliberating communicatively.

Interests, Public Interests and the Public Sphere

For the present project, if we use and take seriously the Habermasian assertion that it is communicative power that can ultimately ground administrative power—make what administrators administer (law/ policy) legitimate—then what we must define more critically the content of communication in the public sphere. I expect that the content of communication needs to be closely linked to the intersubjective discussion of interest-based standards that citizens apply (individually and mutually) in judgments of policy goodness and political justice—the public interest. A potential criticism against the utility of the Habermasian discourse theoretic public sphere is that there is little material left out of the realm of communicative content in this arena (Habermas, 2001).

However, that the intent of Habermas' project was not to tightly delineate the content of communication but to describe the process and outcomes of the public sphere seems apparent. He elaborates in depth on both processes, outcomes and to an extent, membership in both *The Structural Transformation of the Public Sphere* (2001) and *Between Facts and Norms* (1996). Though Habermas seems to take more seriously the idea of the public sphere as space for political dialogue in *Between Facts and Norms*, there remains a persistent hole in the theory—namely, what is the purpose of communication?

Habermas, in both works, leaves out of the theory a statement regarding the proper content of communication in the public sphere. As a theory aiming towards the goal of political legitimacy, the public sphere theory is useful and informative. That is, as a theory that defines the content of political speech, it generally lacks precision and content specificity. If the translation of communicative power to administrative power is to go smoothly, then the content of communication must be normatively relevant to the process of administration. Communication in the public sphere should revolve around the normative content backing procedures and ethics for administrative action. This normative content should carry substantial weight for decisions drawn both within, and on behalf of, the public. Given the normative interpretation of the public interest as a commendatory standard for the content (and application) of public policy, the proper content of discussions in the public sphere are debates over interests held in particular to their association to interests held in common (Flathman, 1966).

As has been suggested above, political participants in the public sphere²⁵ bring to the communicative arena their own autonomously defined interests as standards for judging the goodness of government action, as well as their own beliefs on the content of the interests of their fellow participants. Additionally, they bring with them independent systems and speculations on the role of morality in the public and their interpretations of forms of goodness applicable to public behavior. These same participants bring with them a notion of inclusion and humanity that grounds their articulation of what is an interest legitimately held by others. Likewise, they bring with them a notion of what is acceptable as a system of common government that legitimately affirms or denies the interests of others. Finally, political participants bring to the communicative arena multiple conceptualizations of interest that include self-interest, other regarding interest (in the recent and proximal sense of what is in the interests of my family and immediate friends) and other regarding interest (in the sense of the abstract concerns for one's ethnic group, city, nation or even humanity in general). What always already is part of the public sphere is the privilege of interests as the topic of discussion.

The collectively defensible and intelligible rationality standard is problematic in a pluralistic environment of the nation as a whole, and on an even more limited scale, of the legislative body as a whole. As MacIntyre (1988) suggests, the problem of defining

²⁵ The citizens-only model of politically meaningful public deliberation neglects the fact that citizenship is a more porous state than originally constructed in the Westphalia model of state-ness taken as the "true" form by Habermas, Arendt, and their critics. In the American model in particular, we cannot ignore the importance of non-citizens (illegal aliens, resident aliens, etc) as deliberative interlocutors in the political process. Particularly in states such as California, Texas, Florida, the desert southwest and New York, the political involvement of non-citizens shapes the policy process significantly in important areas such as labor, agriculture, education, and health care policy. I will revisit the problem of the representation of non-citizen interests in a later chapter.

rationality is the problem of defining the philosophical system of the philosopher in question, which must be done in the context of a particular tradition. For the achievement of rationality standards in the collective decisions made by a legislature, the terms of rationality are inevitably multiple as individual legislators bring to bear their own philosophical and normative presuppositions of what is a rational action. Coupled with the modern pluralism of a legislative body of a state such as America that is certainly plural in its socio-cultural traditions of philosophy and rationality standards, the standard of mutually defensible rational decisions in government is notably difficult to achieve. Consequently, when speaking of the effort of government to define and abide by the public interest standard, the suggestion of Oppenheim (1981) requires that decision-makers conform to standards of strict rationality in their decisions, in order to promote the collective welfare of the full public "P."

It is unlikely that legislative decisions will conform to the standards of strict rationality without the voices of all heard. Because the standards of rational decision-making are difficult to define according to standards of strict rationality, the rationality standard needs flexibility. I suggest that this softening of rationality reflect a demand that legislators act with a vision of the ideal public interest in mind. More elaborately, the ideal that legislators such are striving for when deciding "in the public interest" is the achievement of political stability defined in the near term. A pragmatic standard of political stability ought to be the course. Certainly, stability as a goal is interpretable and could reflect antidemocratic or out-right authoritarian standards, such as institutional racism or sexism. However, the act of decisions made in the public interest within a

democratic government structure that takes seriously the notions of pragmatic experimentalism in democracy stymies *a priori*, the perpetuation of antidemocratic or authoritarian government. The ideal standard of political stability in the democratic government structure that operates according to a rationally defensible public interest is the protection of universal democratic participation.

Conclusion

The definition of the public interest is, “if it is the consensus position among all A's, that X be legitimately enacted to achieve the ideal of political stability defined as protecting the institution of the demos, then X contributes to the achievement of the ideal of full public P.” The modifications to Oppenheim’s formulation are useful for defining the terms of participation and goal orientation of the act of decision-making in the public sphere. However, the modifications to the definition do not resolve a crucial question of politics in the public sphere. Does this modified definition offer additional advantage over the recurring problem of asymmetry between the achievement of political justice and fulfillment of the public interest on behalf of both the individual and the larger community?

Through full democratic participation and mutually reflexive discourse in the public sphere, one can come to know the interests rightfully included in the public interest. Moreover, it is only through this discursive process that one can know which estimations of individual or group interests are common to all in public P. Given the multifaceted character of the modern demos, the decision-making process must fall back

upon the common denominator for intersubjectively defined human relations—
communications about our needs.

CHAPTER III

DEMOCRATIC INTERESTS AND A PRAGMATIC THEORY OF THE PUBLIC INTEREST

Implied throughout the previous chapter, is the assertion that the public interest is good in itself. The normativity and optimality of the public interest was “given,” In light of the volume of debate on the utility of the public interest and its true content, some of which has been offered for analysis in the earlier chapter, the bareness of assertion cries out for further refinement. Here, I offer a defense for the public interest as democratic standard for administrative action.

Starting with the classical Greeks and Romans, and continuing into the high modern age of the eighteenth and nineteenth centuries, the assertion that there is a natural political will common to all in a governed body was virtually unchallenged.²⁶ This argument seems non-controversial when we reflect on the history of the concept of political community starting with Plato and Aristotle.²⁷ However, what is often unarticulated the preeminent importance of communication for the political community.

²⁶ Certainly, there are more thoroughgoing assessments of the natural public interest offered by natural law scholars or early Christian thinkers to attend to at greater length given infinite time and space. For the moment, I will leave these to the side.

²⁷ An extended analysis of the concept of the community in both Plato and Aristotle would be too much a digression here. Nevertheless, within the work of Plato in particular, the notion of a political community is a “given” when collections of people grow beyond the capability to serve their needs without assistance. In the *Laws*, Plato offers that there are four types of early political community, which he proposes grow naturally from the expansion of the household to the neighborhood and so on. Extensive analyses have been offered by Elshtain 1993, Klosko 1981, 1986 and Nagle (2006, on Aristotle primarily) to support the notion of a natural political community in early Greek thought.

It is partly inattention to the nature and necessity of political communication that fomented the decline of the public interest as critical standard for legitimating and guiding the political community. This much is certainly noted by Dewey in his assertion that there is “more than a verbal tie between the words common, community and communication” (1961, 4). What Dewey desired to say here was that the dissolution of the impetus, the means and the necessity of true communication, leads to the evaporation of a community—that necessary foundation for the political.

Though there are, of course, competing analyses for the disappearance of the public interest as concept and standard, Dewey’s articulation perhaps deserves greater attention. It was not until the later nineteenth and early twentieth centuries (Dewey’s period) that the dissolution of the naturalistic thesis for the public interest became so readily accepted. The question that Dewey so often sought to answer was “why?” His analyses suggest that the dissolution of the common will is attributable to the march of history as technological progress. The rise of technological mastery of the environment, both social and natural, the mastery of the physical body, as well as the general increase in the pace of the lives of even the most “ordinary” of persons, contributed to the submersion of the public interest as a social and political “fact.” Through routinization of work, production, knowledge, and travel, the compelling force of a normative public interest as basis for the formation of social life diminished in favor of the externally imposed force of these other standards. Rather than the walls of society holding together by the mortar of commonality, scaffolding of routine encased the walls like ivy, the shiny material of which seemed to be self-generating. Soon, external controls that

seemed so much like Redi's maggots replaced the notion of a self-sustaining or self-administering community—evolved from the sweat of common experience. Societies routinized and specialized lost their drive as order imposed from an outside to which no one could point enveloped the social and political.

This loss of commonality had its effects—nihilism, Nietzsche, Sartre, Dadaism, Salvador Dali—each of which demonstrated the loss of the “common.” In addition, as leaders attempted to resuscitate the community from the outside, further losses were endured. The mistake of the leaders was not their chosen end—to revive the social—but their means. Their mistake was to resurrect a social that was not in communication with itself, but was, to follow d'Argenson, communicative only with what leaders determined to be not-community.²⁸ The means necessary to revive the community did not lie, as they suspected, outside of it, but rather within it. What needed to have occurred was the internal rediscovery of the will of the individual in true relation to the social (the family, community, and so forth). Society did not require—in fact, it revolted against—external refoundation. Man, however, took to the project of externalization of himself through the politicization of (supposedly) innate differences. Such differentiation of the individual and her will would become the crux of modern liberal democracy, the vestiges we can see today in the overwhelming claims of identity politics.

The external imposition of routinization, Durkheim (1979) would later note, led to a degree of *anomie* that deflated the conditions necessary to generate a common-will or true public interest. It emphasized the differences between individuals as “things” to

²⁸ See Rousseau *The Social Contract* Book II, chapter III, note 1 on d'Argenson's intent to harmonize the social tensions through opposition to a third or external force.

be summed, controlled, and made programmatic, not those qualities upon which true community as outgrowth of the recognition of true individuality might be founded.²⁹

Rousseau makes clear that the common-will is the sum of the differences between individual differences:

There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interests into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another, and the general will remains the sum of the differences (Rousseau 1962, 40 (Bk II, Ch.III)).³⁰

Rousseau's common will is predicated on a notion of man as more than merely self-serving actor—man had a capacity to understand himself relationally. This relational quality of men—something which contemporary theorists of society have attempted to redefine as reflexivity—disappeared in the routinization of man and environment. Without this, the commonality of the common will—the social remainder - evaporated and the dominance of the will of all became the social norm. Men dissociated from one another and from the unity of common life, even from the law itself. The avalanche of passé individualism that overtook society forced apart the commonality of experience and killed the public basis of a conversation intended to serve as the operators of the public interest. Dewey clearly laments this as the death of conjoint experience necessary to found a community, “Whenever there is a conjoint activity whose consequences are appreciated by all singular persons who take part in it,

²⁹ Dewey makes a similar argument in *Reconstruction in Philosophy* (1950).

³⁰ Il y a souvent bein de la différence entre la volonté de tou et la volonté générale: celle-ci ne regarde qu'à l'intérêt commun, l'autre regarde á l'interêt privé et n'est qu'une somme de volontés particulierès; mai ôtez de ces mêmes volontés le plue et les moins qui e'entre-détraisent reste pour somme des defferences in la volonté générale (Book II, Chapter III).

and where the realization of the good is such as to effect an energetic desire and effort to sustain it in being just because it is a good shared by all, there exists a community” (1927, 49).

This dissolution of the public that occurred from Rousseau’s time (1762) to the early 1900s created the conditions sufficient to provoke Dewey to lament the loss of the public and the evaporation of democracy in *The Public and its Problems*. Dewey's problem with the future of American democracy was the eclipse of the face-to-face community of the original town hall meeting. He was intent in his writings to advocate its return as force for the generation of the truly democratic society. His project ties together in a fundamental way the desire to recreate the community as necessary conditions for a true public interest.

Dewey turned his eye from the role of a public interest as an externally defined standard for the democratic public and focused on the generation of the public interest from within the experience of democracy. This experience of democracy, he proposed, is based in the communication of democratic life. In *The Public and its Problems* and elsewhere, he makes clear that, as an elementary component of the concept of democracy itself, communication holds a special place. What he did not make fully clear, however, is how it is that communication, and particularly communication for democracy, intersects with the public interest as standard for the operation of government?³¹ That is, how does the public interest work?

³¹ There may be many earlier theorists of a public interest in the ancient and medieval traditions, along with theorists of the public interest in other cultures. I agree with any critics that beginning with Dewey is arbitrary. Nevertheless, any extensive elaboration on the extended history of the concept must wait.

Like Dewey, later philosophers of communication and politics, Habermas (1981, 1984, and 1990), Honneth and Farrell (1998), Peters (1999), Rorty (1982), and Westbrook (1991), have made the case that communication is a critical force in the formation and maintenance of democracy. We can see the work of these later theorists as representatives or extensions of this trend. Nevertheless, as the emblem for the concept of communicative democracy in the modern state, the work of Dewey looms large.

John Dewey on Democratic Communication

Specialists in the study of Dewey's philosophy are quite right to point to the presence of multiple Dewey's on the stage (Thayer 1982, 11-22). There is the Dewey of the scientific method and common sense (Dewey 1938b, Dewey and Bentley 1949; Kaufman-Osborne 1984, see especially, 1143-47; Metz 1969), the Dewey faithful to the beneficence of science (Dewey 1950; White 1958), the Dewey dedicated to individual and community (Dewey 1927, 1929, 1962; Damico 1978), and, of course, the Dewey devoted to education (Dewey 1938a, Dewey 1961, Greene 1982). Certainly, the categorizations of Dewey as more or less Hegelian or more or less psychologically focused are apt. However, the categorization of Dewey's thought that requires serious attention is the democratic, deliberative, even communicative, Dewey (see Bohman 1998; Evans 2000; Gouinlock 1978; Honneth and Farrell 1998; Knight and Johnson 1996; Smiley 1999; Westbrook 1991). Importantly we must also consider actively his

work as demonstrating a unique position committed to the democratic development of a public interest, one that is useful for the practice of democracy.³²

It is difficult to define in a few sentences Dewey's understanding of democracy. Like many topics he would elaborate on, Dewey's conceptualization varied over his lifetime. Of the many democracies that Dewey put forth, perhaps two are most important for understanding democracy as a form of government that captures fully his appreciation of the public interest as an element of community and a standard of action. Firstly, there is the communal-experiential, which had considerable influence upon the procedure that Dewey's communicative democracy implies:

A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience. The extension of space of the number of individuals who participate in an interest so that each has to refer to his own action to that of other, and to consider the action of other to give point and direction to his own, is equivalent to the breaking down of those barriers of class, race, and national territory which keep men from perceiving the full import of their activity. These more numerous and more varied points of contact denote a greater diversity of stimuli to which an individual has to respond. They consequently put a premium on variation in his action (1961, 93).

The second, the progressive-educational, influences the substantive ends of democracy for Dewey:

Democracy has many meanings, but if it has a moral meaning, it is found in resolving that the supreme test of all political institutions and industrial arrangements, shall be the contribution they make to the all around growth of every member of society (1948, 147).

³² Dewey utilizes public interest, public opinion, and public will throughout his work often as synonyms for one another. While a specialist in the study of Dewey's selection of language (no small part of Dewey's own studies) may quibble with this amalgamation, I will use public interest to capture what it is that Dewey meant when using either of these terms.

Though Dewey himself would reject the bifurcation of a definition of democracy into its procedural and substantive emphases (as Honneth and Farrell (1998) point out), for heuristic purposes of constructing the communicative definition of democracy, the separation is useful.

Dewey prescribes the scientific method or procedure for analysis of democracy. The scientific method, Dewey argues is the application of the “method of intelligence” to social problems. This means little to those unfamiliar with Dewey until the descriptions of application, method, and intelligence are unpacked.

Application of the methods of scientific inquiry—namely an experimental posture relative to the understanding of experience as valuable—means that we adopt an experiential or experimental posture towards the occurrence of social life as we understand its going on around us. That is, we apply the scientific method “in” experience: “Application *in* life would signify that science was absorbed and distributed; that it was the instrumentality of that common understanding and thorough communication which is the precondition of the existence of a genuine and effective public” (1927, 174). To summarize a bit more clearly, the application of the scientific method in life means that we utilize the language and the background knowledge of a scientific methodology of experimentation to convey our experience—to communicate it to—one another. Dewey advocates such a mode of communication as exemplifying the political democratic use of the scientific method necessary to solve common political problems.

This application of experimentalism is what Dewey describes as intelligence.³³

From *Reconstruction in Philosophy*, we learn that intelligence "... is a shorthand designation for the great and ever-growing methods of observation, experiment and reflective reasoning which have in a very short time revolutionized the physical, and to a considerable degree, the physiological conditions of life..."(Dewey ix; quoted in Metz 1969, 242). Intelligence is the remaking of patterns of intellectual inquiry based on critical observation. This intelligence accumulates through experiences as an individual and an individual-in-the-community. Intelligence is a shared property-- the product of knowledge acquisition between men and the world at large.

In the classic philosophy, the world is essentially a haven in which man finds rest from the storms; it is an asylum in which he takes refuge from the trouble of existence with the calm assurance that it alone is supremely real. When the belief that knowledge is active and operative takes hold of men, the idea realm is no longer something aloof and separate; it is rather that collection of imagined possibilities that stimulates men to new efforts and realizations (1948, 147).

Thus, the scientific method can be conceptualized as the communication of knowledge drawn from the experience of the world as a series of on-going experiments. We know that the scientific method works when we can verify, in common, through communication, that a particular hypothesis about an experience explains away the problematic components of a social problem.

This is the crux of Dewey's communicative democracy, both in its substantive and procedural forms: through the communication of shared experience of life as experience of the world through the lens of hypothetical reasoning, those people sharing

³³ However, complicated democracy and the public interest are in Dewey's thought, they pale in comparison to Dewey's elaboration on the form and content of intelligence. I distill this use of intelligence considerably and it is far from the full characterization of intelligence Dewey renders.

form a community—a public which shares critical symbols³⁴—which is the basic associational (cooperative) unit of government. It is only through the communication of our hypotheses of experienced life that we gain traction on the problems we share in common. That is, in the development of the public interest as genuine, full community (*einverständnis*), agreement on the importance of shared problems depends on a communicative conceptualization of democracy.

John Dewey on the Public Interest

Like Dewey's definitions of democracy, his thought on the public interest also varies according to his position in life and the purpose for which he wrote. This variation, though, is not without unifying and useful themes. Dewey emphasizes, in his definition of the public interest, the importance of the experiential, the educational, and the purpose of morality. As a philosopher consistently focused on the importance of experience, Dewey placed considerable faith in the ability of experience, and importantly for politics-- shared experience, to point the way to future progress.

³⁴ I will attend to the importance of shared symbols in the evaluation of the pragmatics of Habermas' life world. For the moment, the following quote from *The Public and its Problems* is illustrative: "Symbols control sentiment and thought, and the new age has no symbols consonant with its activities. Intellectual instrumentals for the formation of an organized public are more inadequate than its overt means. The ties which hold men together in action are numerous, tough and subtle. But they are invisible and intangible. We have the physical tools of communication as never before. The thoughts and aspirations congruent with them are not communicated and hence not common. Without such communication, the public will remain shadowy and formless, seeking spasmodically for itself, but seizing and holding its shadow rather than its substance. Till the Great Society becomes the Great Community, the public will remain in eclipse. Communication can alone create a community. Our Babel is not one of tongue but of the signs and symbols without which shared experience is impossible" (1927, 324).

This philosopher [Dewey], considered by many to be the foremost American thinker, insisted on the absence of a single, fixed, and final goal in moral and political matters. Every practical decision made in a specific situation involves a risk. Therefore every problem must be solved, not by reference to a fixed end, but by the application of shared experience to that concrete problem (White 1958, 353).

However, encompassed in this resolution is not the prescription of programs or ends, but rather the realization of common thinking— a common “morality.”³⁵

The resolution of problems through the application of shared experience, the application of truly communicative democracy, is not an end of itself for Dewey. The end (as it may be called) was the realization of a moral education that formed the common basis for the continuation of the community itself; the resolution of public problems through democratic communication is not “complete” (nothing is resolved) unless there is education which derives from the sharing of experience and the application of experience to problems. Dewey’s process of moral education presupposes the communicative formation of the public interest as a standard for government action.

Realization that need for reflective morality and for moral theories grows out of the conflict between ends, responsibilities, rights and duties defines the service which moral theory may render... Moral theory can (i) generalize the types of moral conflicts which arise, thus enabling a perplexed and doubtful individual to clarify his own particular problem by placing it in a larger context; it can (ii) state the leading ways in which such problems have been intellectually dealt with by those who have thought upon such matters; it can (iii) render personal reflection more systematic and enlightened, suggesting alternatives that might otherwise be overlooked, and stimulating greater consistency in judgment. But it does not offer a table of commandments in a catechism in which answers are as definite as

³⁵ As with many concepts, Dewey espoused an idiosyncratic definition of morality. Morality for him was a conditional moral imperative (though he did brush against Kantian morality in places). A moral judgment was, as Gouinlock tells us “the plan of action which would transform the situation from problematic to consummatory” (1978, 220). Consummatory experience is unified activity motivated by the common end-in-view (action to integrate the shared situation and improve it for all members of the community).

are the questions which are asked. It can render personal choice more intelligent, but it cannot take the place of personal decision, which must be made in every case of moral perplexity (Dewey and Tufts 1910, 175-76).

It is the moral education that derives from community and communication that lends normative weight and preference to the public interest. The public interest defined through communication is flexible according to the standards of the community itself—it is respectful of the diversity of common forms, of individuality in the community. In addition, more importantly, relying on Dewey's understanding of communicative democracy, it is universally accessible. That is, Dewey's form of communication recommends permission for all persons into the conversation. He implies hopefully that, by virtue of their participation, all are fully participatory in the knowledge derived there from. The public interest is common knowledge in the truest sense.

As ideal as this is, Dewey himself realized that there would be pitfalls in the creation of such a public interest as the product of moral education. Namely, not all citizens would find the expression of the virtue of scientific reasoning easy, much less amenable to their understanding. Citizens would inevitably fall into the modes of individualism that precluded their ability to be a fully scientific communal public:

Non-scientific modes of practice, left to their natural growth represent... arrangements of objects which cluster about the self, and which are closely tied down to the habits of the self. Science or theory means a system of objects detached from any particular personal standpoint, and therefore available for every possible personal standpoint... [Science] takes its stand not with what is common with some particular neighbor living at this especial [sic] date and in this particular village, but with any possible neighbor in the wide stretches of time and space (Dewey 1916, 440-441; quoted in Kaufman-Osborn 1984, 1153).

That he realized this, however, does not mean that he elaborated extensively on the resolution of these problems. As later critics would note, he failed to make clear how

citizens could strip themselves of their particularities and engage in moral deliberations that would lead to true public interest dialogue (Gouinlock 1978). It is for this reason that contemporary pragmatic thinkers are compelled to look towards others for a theory of communication that could satisfy the needs of communicative democracy and the pragmatic public interest.

John Dewey and Jürgen Habermas

Recent theorists of communication and democracy have alighted upon the similarities between John Dewey's and Jürgen Habermas' theories.³⁶ While there have been some elaborations on the role of communicative action for moral education in the democratic community, there has not been extensive comparative analyses of the theories of democracy in both. Some preliminary starting points come from and his collaborators:

To follow Habermas and Bernstein, a later pragmatist of a Deweyan stripe:

He [Bernstein] critically compares the proceduralist notion of a democratic process- presented as the sole source of political legitimation—with Dewey's substantive conception, and arrives at the conclusion that a discourse theory of law and democracy...must tacitly presuppose a substantial notion of a democratic form of ethical life: "Dewey... is most concerned with 'the means by which a majority comes to be a majority', that is, with the public debate, discussion and persuasion that precedes and influences this voting practice. We can, of course, call this complex process 'procedural' ... because even after the most responsible and enlightened discussion, it is still an open question as to which substantive decisions will be made by majority rule. It is here that the crucial ambiguity arises, for this is a very different sense of procedure. Such a procedure involves substantial-ethical commitments. When Dewey speaks about 'debate, discussion, and persuasion', he is not simply referring to formal rules of

³⁶ Richard Bernstein would certainly be an example, as would those contributors (including Habermas himself) to *Pragmatism, Critique and Judgment* (Benhabib and Fraser, editors 2004).

communication, rather his major concern is with the ethos of such a debate. For democratic debate, ideally, requires a *willingness* to listen and to evaluate the opinions of one's opponents, *respecting* the views of minorities, advancing arguments *in good faith* to support one's convictions with new evidence or better arguments. There is an ethos involved in the practice of democratic debate" (Habermas 2004, 33-34).

The major elements of similarity are not only the appreciation that both theorists have for the importance of communication for democracy and communication in democracy, but also their appreciation of the form that communication must take in a communicative democracy and the products of communication for the betterment of democracy.

Dewey and Habermas' belief in the use and purpose of communication in democracy intersect upon four major dimensions. First, both suppose the presence of a public sphere where communication occurs. Second, both suggest communication for the rationalization of solutions to complex problems borne of democratic diversity. Third, both emphasize a mode of communication that is discursive and eschew the vagaries of strategic or instrumental rationality for the development of the democratic community. Fourth, both point to the public interest as a "product" of democratic communication.

Communication, for both Dewey and Habermas, occurs in a public sphere that is social rather than exclusively political. Habermas suggests, "The mass democracies constituted as social welfare states, as far as their normative self-interpretation is concerned, can claim to continue the principles of the liberal constitutional state only as long as they seriously try to live up to the mandate of a public sphere that fulfills political functions" (Habermas 1992, 441). Some political functions, he suggests, include recognition and accommodation of plural interests, adaptations to the power

structures of the society, the restatement of the importance of deliberation as democratic political medium, and the resurrection of a civil mode of society. Each of these political functions he ties to the enhancement of a discursive mode of democratic governance for the political public sphere.

[The] ‘political public sphere’ is appropriate as the quintessential concept denoting all those conditions of communication under which there can come into being a discursive formation of opinion and will on the part of a public composed of the citizens of a state. This is why it is suitable as the fundamental concept of a theory of democracy whose intent is normative (1992, 446).

While Habermas emphasizes the political public sphere here, it is important to reflect on his definition of those conditions of communication as *social* conditions rather than merely political conditions. That is, it is important to recall the connection between the civil society and public sphere.

Habermas’ democratic public sphere is the universally accessible, open deliberative space—marked by the products of conversations codified and reified via media of all forms—where men and women come together to engage in discourse on matters both practical and theoretical concerning those issues they have decided, according to their own independent calculations, require solution.³⁷ These conversations

³⁷ It would be a shortsighted misappropriation of the large volume of Habermas’ work to suggest that there is one singular definition of the public sphere found within his contribution. As Calhoun (1992) points out, the conceptualization of the public sphere within Habermas’ own work alone has undergone several transformations. These many transformations are due in part to Habermas’ own revisions as well as his appropriation of and response to transformations of the original theory by his multiple critics. The transformations of the public sphere by Habermas’ critics and advocates have served to alter the fabric of the original Habermasian public sphere definition.

To the extent that a singular definition did ever exist, it appears in his original formulation of the public sphere, in *Strukturwandel der Öffentlichkeit* (1962), translated to English as *The Structural Transformation of the Public Sphere* (1989).

The bourgeois public sphere may be conceived above all as the sphere of private people come together as a public; they soon claimed the public sphere regulated from above against the public authorities themselves, to engage them in a debate over the general rules governing relations in the

generate exactly what Dewey meant in his conceptualization of the public (1927). These conversations are not purposeless, but rather are oriented towards the eventual satisfaction of all ideas of the good life collectively defined. Through this conversational media, comes realization of the power of the public.

The joint effort of citizens in the moment of acting in common generates the full possibility of communicative power (Dewey 1927, 49; Habermas 1996, 17-151). Communicative power as the basis of the larger civil society emerges as actors agree to abide by the principles of contractual obligations embodied and reinforced through their discussions. Stated otherwise, communicative power is the original “divine spark” of the state in the sense that it is the basis for the communication to found state action.

It is important to note that the concept of communicative power both catalyzes civil society as society and as the political public sphere. As Cohen and Arato note,

Civil society is defined in terms of social associations cutting across class relations: neighborhood groups, networks of mutual aid, locally based structures providing collective service. More dramatically, civil society is seen as the space of social experimentation for the development of new forms of life, new types of solidarity, and social relations of cooperation and work (1992, 38).

In civil society, “power corresponds to the human ability not just to act but to act in concert” (1996, 148). The basic associative mechanism that grounds each of the structures and organizations, which Cohen and Arato suggest constitute civil society, predicate the achievement of communicative power, or the “potential of a common will formed in non-coercive communication” (Habermas 1996, 47). At the point at which the

basically privatized but publicly relevant sphere of commodity exchange and social labor. The medium of this political confrontation was peculiar and without historical precedent: people’s public use of their reason (27).

power aggregated together requires normative legitimation of the natural tendency towards stratification via the division of labor, rules of order and engagement for the continuation of communication-- the political civil society—arises. Here, the public sphere emerges.

Political society... is understood as the space in which the autonomy of groups and the articulation of conflict among them are defended and the discussion and debate of collective choices occur. The concept of political society thus includes the public sphere as its major dimension, but given the stress on conflict (and negotiation and compromise), it is entirely reducible to it (Cohen and Arato 1992, 38).

As a critical and constitutive power, the political civil society is the place where persons come together to do—as Habermas indicates—the business of making law itself.

The concept of communicative power requires a differentiation in the concept of political power. 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 discourse formation of a common will, not the implementation of the laws issuing there from (Habermas 1996, 150).

Stated otherwise, politically autonomous actors in the political civil society define the content of the law, but are not *by necessity* involved in implementation of it. As this discursively formed law is the product of political deliberations and emanates from the communicative action of civil society, connections form between laws (including its implementation) as expression of the critical part of the ethical-normative public sphere.

The space of civil society, dialogues motivated by social critiques relevant to the creation of a common will, as normative ethical grounding for the institutions of government, forms the contours of the public sphere. In Habermas' words,

In complex societies, the public sphere consists of an intermediary structure between the political system, on the one hand, and the private sectors of the life-

world and functional systems on the other. It represents a highly complex network that branches out into a multitude of overlapping international, national, regional, local and sub cultural arenas (1996, 373-374).

In the complex political arrangements of a modern state,³⁸ the public sphere lies between the conventional sovereign arrangements of politics³⁹ and economics (Habermas' system), on the one hand, and, on the other, those social conventions that form our background knowledge held in common (i.e., the life-world⁴⁰ to include, drawing upon Dewey, the socio-functional organizations of society such as familial, gender, sexual and labor relations).

As the critical space where individuals come together to harness communicative power through discourse on the norms, structures, and conventions of politics, the public sphere serves as the locus of creation for the *volonté générale* or public interest. The public sphere is where we define what it is we, both individually and collectively, want from our government. As summarized by Calhoun 1992 (4-10), the essence of the bourgeois public sphere is that it serves as “a mode of societal integration” that includes all rational-critical discourses about the matters of state, the administration of the state, and the economy. At its core, the public sphere is the counter-position of all individuals

³⁸ I am referring to the American political society in particular here.

³⁹ That is, representative-represented, citizen- legislator, citizen/non-citizen arrangements of power.

⁴⁰ The definition of the life-world varies in the many texts in which Habermas further develops the concept. Unlike more sociologically or philosophically imbued definitions, I accept the definition of lifeworld that includes a stronger role for institutions, which Habermas develops in *Between Facts and Norms* (1996, 23): “The lifeworld, of which institutions form a part, comes into view as a complex of interpenetrating cultural traditions, social orders and personal identities.”

formerly subject to the state, against the state through the performance of critical conversation.⁴¹

The importance of the public sphere for the state is that this newly disaggregated audience is interested not only in continuing its participation in state constitution but also the improvement of the constituted state according to its evolving discursive ideal. To the participants of the public sphere, this means a new radical openness to the potency of state power. To the state itself, the emergence of the public sphere means the beginning of a critical form of accountability from below, one that compels the state to account for itself while also compelling compliance from citizens.

Like Dewey, the basic premise that grounds communication in Habermas' original conceptualization of the public sphere is the belief in the goodness that evolves from true communicative action.⁴² The achievement of communicative action is noted when the situation of interactive communication is reached. Habermas (2001, 58) states, "I call interaction communicative when the participants coordinate their plans of action

⁴¹ The modifier critical is important here as the force of the public sphere is tied into Habermas' understanding of the emancipatory project of critical theory. In many ways, the articulation of the public sphere is the extension of the task of critical theory to those beyond the academy. As such, it is important to specify the definition of critique (which is to be evoked when the term critical is employed here): "Critique understands that its claims to validity can be verified only in the successful process of enlightenment, and that means: in the practical discourse of those concerned. Critique renounces the contemplative claims of theories constructed in monologic form, and in addition, discerns that all philosophy up till now, in spite of all its claims, also only presumes to have such a contemplative character (Habermas 1973, 2). Critique, to evoke a term in common use among contemporary critical theorists, is an explosion of previous forms. In the case of the public sphere, critique is the explosion of the traditional forms of citizen subservience as audience to the doing of politics and power.

⁴² Johnson (1991) and Mitzen (2005) give two further simplified definitions offered of Habermas' communicative action. Johnson suggests, "It involves participants in 'the cooperative negotiation of common definitions of the situation' in which they are interacting" (1991, 184). Mitzen extends the definition of Johnson to "Communicative action, or the exchange of reasons oriented towards understanding, is the heart of public sphere theory. Communicative action builds from the premise that reason is intersubjectively constituted and inheres in linguistic communication" (2005, 403).

consensually, with the agreement reached at any point being evaluated in terms of the intersubjective recognition of validity claims.” Dewey would likely have classified this as the consummatory experience that arises from actions taken conjointly for the fulfillment of the end-in-view. The goal of communicative action is creating social integration—mutual understanding-- of previously atomized individuals who are otherwise motivated only towards the fulfillment of their own interests.

The importance of Habermas’ public sphere as a political foundation of modern society is that, in its politically expressed form, the public sphere supports the articulation of the public interest. As both Habermas and his critics allude to, the political public sphere is more than the sum of its democratic permissiveness and discursive processes; it is a productive organ of society. In addition, as will be argued next, what the public sphere produces is none other than the articulation of a democratically defensible public interest.

Habermas' use of the concept of interests within the development of his thought on the public discourse points to the public interest as a public sphere product. Habermas himself does not set about defining the public or individual interest, though he often evokes the trends of interest language. Interestingly enough, like Dewey’s, Habermas’ articulation of the nature of interests in the public sphere often parallel the arguments of Adam Smith in his discussion of the formation of a public interest (which he often calls the common good).⁴³ That is, he identifies the formation of interests (self

⁴³ I will not endeavor here to separate the concepts of a general will, common interest, common good, general interest, public will or public good from that of the public interest. As Held (1970), Flathman (1966), and Bell (1993), and Kristol (1972), have demonstrated the conceptual muddle (belabored by Sorauf (1962) and Schubert(1960, 1962)) of the public interest is made more nettlesome by the invocation

and private) as reflecting the character of the morals and values communicated through the exercise of practical reason. As participant in the community of the democratic public sphere, man himself can be *homo oeconomicus* (self-interested), but he will always be fundamentally other-regarding.

Interests, in Habermas' parlance, are born in the process of asking both technical and practical questions. Interests embed themselves in our construction of interests and our encounters with the world around us, whether we engage fully in questioning our experience of the normative aspects of the social world (practical) or acting within the normative world (technical). To elaborate on the difference between the technical and the practical, Habermas offers the following distinction:

Technical questions are posed with a view to the rationally goal-directed organization of means and the rational selection of instrumental alternatives, once the goals (values and maxims) are given. Practical questions, on the other hand, are posed with a view to the acceptance or rejection of norms, especially norms for action, the claims to validity of which we can support or oppose with reasons. Theories which in their structure can serve the clarification of practical questions are designed to enter into communicative action (Habermas 1973, 3).

That is, questions about the validity of norms for action – of the public interest as administrative action standard—should be the topic of communicative action in the public sphere.

To defend the idea of a distinctly Deweyan-Habermasian public interest, it is necessary to re-evaluate Habermas' developed notion of "public opinion" as public

of alternative concepts. "Flathman stated well the futility of abandoning the concept of the public interest, and I concur. 'Determining justifiable governmental policy in the face of conflict and diversity', he wrote, 'is central to the political order; it is a problem which is never solved in any final sense but which we are constantly trying to solve. The much-discussed difficulties with the concept are difficulties with morals and politics. We are free to abandon the concept, but if we do we will simply have to wrestle with the problems of some other heading'" (Held 1970, 10). See also Douglass 1980 for an assessment of the similarities and differences between common good and public interest concepts.

interest.⁴⁴ As shown in the previous chapter, a number of definitions of the public interest exist, but the normative conceptualization persists. This articulation figures the public interest as a critical standard that most people, who have chosen to enter public discourse, can agree upon as the common and common-sensical standards of goodness of public policy, its implementation, and consequences. In the thought of both Habermas and Dewey, public opinion is not merely the sum of uncritical statements of acceptance of goodness in government actions or public policies for the individual alone. Public opinion is “...the enlightened outcome of a common and public reflection on the foundations of social order” (1927, 96).

To elaborate further on the similarities between Dewey and Habermas’ public interest, it is illustrative to examine the common sources from which both draw. From Locke’s law of opinion,⁴⁵ Habermas draws a more critical conceptualization of the term opinion for its place in the public sphere. Locke, he asserts, was not interested in public opinion per se, but rather was concerned with the legitimation of private opinion as relevant to political discourse. Locke, he contends, freed the connotations of opinion from those of prejudices (individually held in malice or judgment) towards the authority of others.

⁴⁴ Some problems of terms and translation plague the reconstruction of Habermas’ public opinion as the public interest. Within *Strukturwandel*, Habermas uses the terms “public opinion”, “opinion publique”, and “public spirit”, as well as the German “Meinung”, “öffentliche meinung”, and “gemeingeist.” He does not draw distinctions between the uses of these terms either. Consequently, it is difficult to assess what Habermas genuinely means in the use of “public opinion” and its English and French synonyms as compared to his use of the German rough equivalents. He does not, however, use the term “public interest” or “öffentliche interesse”, although the characteristics ascribed to the public opinion are parallel with the characteristics described, by Cassinelli in particular, as the public interest.

⁴⁵ In the *Essay Concerning Human Understanding* (Locke 1979).

‘Opinion’ denoted the informal web of folk-ways whose indirect social control was more effective than the formal censure under threat of ecclesiastical or governmental sanctions. ... opinion was not tied to reconditions of education (and of property); for contributing to it, far from requiring participation in a process of critical debate, demanded nothing more than the simple uttering of precisely those ‘habits’ that later on public opinion would critically oppose as prejudices (Habermas 2001, 91-92).

Building the thought of Bolingbroke (Habermas 2001, 59-60) into the Lockean context, Habermas’ definition of public opinion is augmented by the force of the public spirit—“the direct, undistorted sense for what was right and just and the articulation of ‘opinion’ into ‘judgment’ through the public clash of arguments” (94).⁴⁶ Through the inclusion of the public spirit as a component of the articulation of public opinion, Habermas’ conceptualization of public opinion as a common heartfelt (90), “general will,” comes close to the “consensualist” or “ethos” definition of the public interest offered by later administrative theorists such as Redford (Cochran 1974, 331) as well as Dewey.⁴⁷

As Redford (1954, 1108) describes the public interest, “It may be defined as the best response to a situation in terms of all the interests and of the concepts of value which are generally accepted in our society.” He later developed a more elaborate, but not more useful, definition of the public interest. In Redford’s 1958 definition:

The public interest, then, is diverse. It is indirectly-created interests struggling with other interests; again it is intrinsic, shared interests of all or most in substantial objectives; still again it is interest in machinery for fair consideration and for resolution of intergroup and public interest (113-14).

⁴⁶ There is a strikingly similar position elaborated in Forster (2005).

⁴⁷ Redford and others whom Cochran defines as the consensualists view the public interest as “a vague, but valuable term which refers policy debate to a public value consensus” (331).

In either Redford or Habermas' conceptualizations, it is the values of the polity that ought to ground the administrator's search for decision-making guidance.⁴⁸ Such sentiments are echoed in Dewey's description, though he would have found the public spirit in the consent of all persons to the pursuit of scientific inquiry, while neither Habermas or Redford are willing to articulate a content of public spiritedness so definitively. "Only continuous inquiry, continuous in the sense of being connected as well as persistent, can provide the material of enduring opinion about public matters" (1927, 178)

These definitions are extended through the modifications to the term public opinion made in the development of Habermas' conceptualization of the public interest. Arguing from the perspective of the Burke of the late *Declaration of Rights*, Habermas remarks that "the definition of public opinion as a vehicle and organ of legislative importance (or sovereignty)... nevertheless left no doubt concerning the concept of the 'general opinion'. The opinion of the public that put its reason to use was no longer just opinion; it did not arise from mere inclination but from private reflection upon public affairs and from their public discussion" (1996, 94). Habermas, as a product of the Frankfurt School, is skeptical of the norms enforced by authority through mass media. He augers that the media is corrosive of the public opinion, degrading it into non-public, private reflections. Yet, he remains committed to the importance of the concepts of public interest and public opinion for constitutional law establishment, formation, and

⁴⁸ Many of the articulations of Redford, Schubert, Herring, and Leys emphasize the importance of the public interest as a standard useful in cases of difficult administrative decision-making. I will return to the importance of the democratic public interest in administrative decision-making at the end of the chapter.

maintenance. In a sense, like Dewey, Habermas recognizes the “noble lie” function of the appeal to public interest in complex, interest based democracies. The importance of the perpetuation of the legal fiction of the public interest backed constitution is, he asserts, essential to the realization of democracy.

“The” public opinion is indeed a fiction. Nevertheless, in a comparative sense the concept of a public opinion is to be retained because the constitutional reality of the social –welfare state must be conceived as a process in the course of which a public sphere that functions effectively in the political realm is realized, that is to say, as a process in which the exercise of social power and political domination is effectively subjected to the mandate of democratic publicity. The criteria by which opinions may be empirically gauged as to their degree of publicness are therefore to be developed in reference to this dimension of the evolution of state and society; indeed such an empirical specification of public opinion in a comparative sense is today the most reliable means for attaining valid and comparable statements about the extent of democratic integration characterizing a specific constitutional reality (2001, 244-245).

Dewey argued that the grafting of social scientific conclusions onto the public interest as empirical justification for government action renders it more fictive.

Knowledge of history is evidently necessary for connectedness of knowledge. But history which is not brought down close to the actual scene of events leaves a gap and exercises influence upon the formation of judgments about the public interest not only by guess-work about intervening event. Here, only too conspicuously, is a limitation of the existing social sciences. Their material comes too late, too far after the event, to enter effectively into the formation of public opinion about the immediate public concern and what is to be done about it (1927, 179).

In the final analysis, both Dewey and Habermas advocate a public interest that is both maximally attentive to the needs of the citizenry and that is maximally devoted to the discursive format.

The Public Interest as Administrative Standard

This analysis of the similarities between Dewey and Habermas' theories of the development of the public interest helps us to understand and draw conclusions for the importance of such a standard for public administration. Theorists devoted to Habermas and the larger critical theory project may initially reject the argument here that the public interest Habermas describes has any "real" connection to administrative practice. Indeed, some commentators such as Friedland would suggest that the administrative could not, by its very nature come into full communication with the true arenas of communicative action (i.e., the public sphere).

The system of administration can never be wholly detached from language: in the end, the system of rules, laws, commands, and so forth remains linked to understanding embedded in language. But bureaucratization takes on its own self-propelling, self-regulating rationality: purposive rational action, which operates as an objective force over the heads of actors in the social world. As power becomes linked to this new form of administration, it too becomes systematically removed from the reach of communicating actors in the lifeworld (2001, 371-372).

The reason that Friedland cites for this incommensurability of administrative and communicative forms is that administration can never become "delinguistified." In other words, administration can never achieve the status of an element of the lifeworld or "those social arenas in which culture, personality, and institutional legitimacy are formed through communicative action. It is a world of lived experience and the arena of social integration through which individuals groups, and institutions are knit together" (2001, 360).⁴⁹ However, for reasons developed in a subsequent chapter, such a separation of

⁴⁹ The administrative is supposed to be part of the system or "those arenas in which integration does not take place through communication, but rather through money and power, conventionally the economic and

the lifeworld and system cannot occur. Communicative action—true democratic communication—occurs where the system and lifeworld meet. Consequently, generation of the public interest occurs only where the administrative arena meets the “citizen” realm. As such, the public interest is (to borrow from Habermas) always already indwelling in the administrative realm, just as it is always already a present part of the public itself.

The possibility for a role played by this communicatively defined standard-- the public interest—prompts consideration of the public interest as a standard for legitimating the “system” to the “lifeworld.” The concept of the public interest has powerful normative connotations in everyday use. When a policy statement evokes the public interest, encapsulated in the statement is the belief that the legitimacy of the policy rests with the stated interests of the full public. Yet, how do we arrive at the normativity of the public interest as legitimating standard? What makes the public interest “legitimate”?

Certainly, other concepts such as “efficiency,” “fairness,” “desert,” or “justice” are useful for describing the normative desirability of a particular policy. Nevertheless, despite how potentially encompassing these concepts may be (justice, in particular), legitimacy, as emblematic of the satisfaction of the public interest, is more compelling.

political systems” (2001, 360). Friedland (2001), I believe is executing here a very limited reading of Habermas’ communicative in communicative action. Communication he proposes occurs where the system and lifeworld meet. There can be no truly communicative action fully divorcing one from the other. In sum, the administrative is as much a part of the lifeworld as is the citizen’s action group. To borrow from Foucault (1977, 1991, 1994), language and power interpenetrate and to divorce the two is to ignore the potency of either. In addition, Friedland is falling into an academic-mental trap (that I call later the disposition of anti-bureaucracy), that induces him automatically to deny the positive role of administration in society.

That legitimacy is a more compelling concept does not suggest that it has particular metaphysical or metapolitical (*pace* Badiou (2005)) qualities that lend a reigning rightness quality to legitimacy that the other concepts do not have. Rather, legitimacy has a proximate quality to the lived experience of citizens than do these other concepts; legitimacy is desirable precisely because it is *not* metaphysical.

The Pragmatic Legitimacy of the Public Interest

The solution to the problem of legitimacy in politics, following Dewey, does not come through recourse to metaphysics or other philosophical descriptions removed from the lived experience of political life. There is no “directing bias” in the cosmos that gives to us a clear relation between things and values that one could call immanently or transcendently legitimate (Hook, quoted in Rorty 1982, 74). Nothing in the social realm—to include the political—is legitimate outside of our experience of its legitimacy *as such*. Therefore, in the political realm, our experience of legitimacy—of whether it seems “right”, the way of governing we experience-- is dependent upon our feelings of political experience.^{50 51} These experiences, it could be said, only occurs where we are able to apprehend or interact with things (facts, objects, and regulatory statements), and

⁵⁰ I borrow loosely from Coicaud 2002 here in the definition of legitimacy as the right to govern.

⁵¹ Consider, for example, the terminology used by whistle-blowers or others who have exited an organization under contest. Consider also, the definition of whistle blowing: “Whistle-blowing has been defined as ‘the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to affect that action’” (Near and Micelli 1985, 4). Terminology often utilized include “did not seem right”, “did not feel right.” See Bromley 1998, Near and Micelli (1985; 1995), Micelli, Near and Schwenk (1991), Perucci, Anderson, Schendel and Trachtman (1980),

evaluate them (subjectively, intersubjectively, communicatively) in the context of the situation.

The experiential and communicative necessity of feelings for defining legitimacy is integral to the analysis of the public interest as symbolic of legitimacy. Following Dewey, our mind and body (the social and the objective) need unity in order to confer the trait of genuine legitimacy upon a process, action, or event:

Feelings make sense; as immediate meanings of events or objects, they are sensations, or more properly, *sensa*. Without language, the qualities of organic action that are feelings are pains, pleasures, orders, noises, tones only potentially and proleptically. With language, they are discriminated and identified. They are then “objectified”; they are immediate traits of things. This “objectification” is not a miraculous ejection from the organism or soul into external things, nor an illusory attribution of psychical entities to physical things. The qualities never were “in” the organism; they always were qualities of interactions in which both extra-organic things and organisms partake. (Dewey, quoted in Rorty 1982, 83).

The unification of mind and body through feelings cannot take place outside of the social realm in which the mind and body experience events or objects. That is, the experience of feelings of legitimacy requires a social and intersubjective component. Legitimacy requires a conversational definition.

The importance of conversation for pragmatic philosophy is undeniable (Rorty 1982, 164-165). Likewise, the importance of conversation for feelings and for politics is undeniable (Nussbaum 2001; Arendt 1957).⁵²

For the pragmatists, the pattern of all inquiry—scientific as well as moral—is deliberation concerning the relative attractions of various concrete alternatives (Rorty 1982, 164)...

It [pragmatism] is the doctrine that there are no constraints on inquiry save conversational ones—no wholesale constraints derived from the nature of the

⁵² I will take up the importance of feelings and feeling conversation elsewhere.

objects, or of the mind, or of language, but only those retail constraints provided by the remarks of our fellow-inquirers (1982, 165)...

The only sense in which we are constrained to truth is that, as Peirce suggested, we can make no sense of the notion that the view which can survive all objections might be false. But objections—conversational constraints—cannot be anticipated. There is no method for knowing *when* one has reached the truth or when one is closer to it than before (1982, 165-6).

Pragmatists do not insist on conversational closure when all have agreed (to the extent that such an accord would be possible) on the definition of truth. To do so would not only fundamentally disregard the pragmatist orientation to experimentation, particularly as basis for democracy, but also would stymie the appreciative stance that the pragmatist must take towards experience. Specifically, to argue the finality of a truth claim would end the conversation by establishing a dualism of “time before truth” and “time after truth” in which the experiential claims (including the emotional claims to the experience as lived) would be declared invalidated by their non-truth orientation. The continuation of conversation is vital to the pragmatist vision of democracy as the establishment of a legitimating public interest that is attendant to full public experience.

The pragmatic orientation toward the establishment of legitimacy, specifically, the belief in the primacy of conversation as “method” of inquiry, offers a useful starting place for elaborating upon the origin of the public interest. The importance of conversation established previously, the question becomes, what mode of conversation is optimal for the definition of a public interest? While neither Dewey, nor Rorty, offer a definition of the substantive or procedural form that a pragmatically appreciative public interest conversation would take, both point to a particular form that has found recent expression in the work of Jürgen Habermas.

The Initial Conditions for Communicative Action

Discourse ethics demands that speakers seek a normatively neutral and procedurally egalitarian stance towards the expression of needs, wants, desires, utility estimations—expressions of subjective meaning—among one another. These discourse ethical conditions facilitate the realization of full communicative parity in discourse as necessary condition of representation. According to the standards of discourse ethics, and thus in bureaucratic-citizen deliberations, the practice of discourse ethical communication entails the creation of a reasonable, rational discussion space. To create fully this rational discussion space as one universally open to all, we must get beyond a thin notion of rationality to create a deeper sense of rationality demanded by deliberative practice.

In a deliberative space, the achievement of true communication according to standards of public reason is expected. Problematically, however, public reason in the Rawlsian sense is already rife with moral normative assumptions that make it less than fully public and therefore not deliberative. As Berkowitz observes,

This [public reason] is the form of reason, or that part of reason that should govern citizens of a liberal democracy in deliberating about ‘constitutional essentials’ and ‘equations of basic justice’. Its content is roughly equivalent to the two principles of justice that emerge out of the original position. It is based on the idea of the ‘reasonable’ which is exhibited ‘when, among equals say, persons are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so’. This further requires a ‘willingness to accept the consequences of the burden of judgment’, or recognize that citizens in a free society will inevitably come to different conclusions about fundamental moral philosophical and religious questions (Berkowitz 2006, 124).

This version of public reason, while modifying Kantian morality to allow it to be more practicable, requires modification if it is implemented in a truly diverse plural liberal democracy. It limits discourse to those who (are able to) choose to 1) be fully public and 2) are able to meet conditions of rational discourse that accept liberalism and liberal values as a starting point. However, for discourse to occur between citizens and bureaucrats, we must abandon the normatively liberal, public reason standard advocated by Rawls in favor of a more Habermasian conceptualization.

Habermas provides a useful synthesis of the demands of thick deliberative rationality:

In rational discourse, we assume that conditions of communication obtain that 1) prevent a rationally unmotivated termination of argumentation, 2) secure both freedom in the choice of topics and inclusion of the best information and reasons through universal and equal access to, as well as equal and symmetrical participation in, argumentation, and 3) exclude every kind of coercion—whether originating outside the process of reaching understanding or within it—other than that of the better argument, so that all motives except that of the cooperative search for truth are neutralized. Anyone serious about participating in a practice of argumentation cannot avoid pragmatic presuppositions that require an ideal role taking, that is, presuppositions that require one to interpret and evaluate all contributions from the perspective of every other potential participant (1996, 230).

To get around the exclusivity of procedural or thin rationality and to take the pragmatics of public interest conversation more seriously, there must be stronger considerations accorded to emotive claims in addition to those upheld by standards of rationality.

To summarize, bureaucrats must regard the insertion of dogmatic claims, emotions, and other “irrationalities” as expressed claims of need, want, and desire.

These claims are argumentative assertions of emphasis that add additional weight to the

claims, in spite their falling outside of the standards of “pure” reason.⁵³

Accommodations are necessary for citizens' demands, recalcitrance, tears, and acts of minor violence as the speaker punctuates their argument with these as crutches to overcome his/her argumentative failings.⁵⁴ Rather than closing off further discussions with emotional or “irrational” clients, bureaucrats seeking to serve as representative stewards should understand these punctuations as evidence that further speech or action is necessary (Forester 1999, 200-220).

Emotion or irrationality does not prevent the realization of discursive parity, however, even though it is not per se rational. Interactions between citizens overwhelmed by emotions can be fit into the demands of discourse ethical parity if we reconceptualize the appeal to strong emotions as a compensatory mechanism employed by citizens who perceive a disadvantage to themselves in the argumentative situation (see Nussbaum 2001 and her evaluation of the use of emotions in human--non-human conversation). In order to accept the appeal to emotions as a compensatory mechanism in argumentative interaction we must re-think the role of emotions as coercive mechanisms. Rather, we must regard emotional appeals as alternative cooperative mechanisms.

Because Rawls' original position does not permit consideration of emotion and reason, the Rawlsian pre-political situation (the veil of ignorance) is not a useful position

⁵³ “Irrationalism” Rorty (1982 169-175) would insist, is a requirement of the true pragmatic orientation. Namely, the pragmatic conversation should not be hemmed in by strictures of professionalism that demand that all conversations have a “winner” or “end-point” decided by the force of the more “rational” argument. That is, the conversation must occur outside of the bounds of pure reasoned discussion.

⁵⁴ As Thompson (1985) notes this does not work both ways however.

to start from in constructing a notion of deliberation in public administration. Under the conditions of this original position extrapolated to the real—conditions of liberal democratic debate oriented towards achieving reasonable pluralism—there are no grounds for emotions to carry argumentative weight. That is, those “things” which we become emotional about-- our identity, family, culture, status-- matter not. If emotions carry no weight and need exclusion from true deliberation, the content and membership of the discussion evaporates to merely uncontested points debated by a homogenous population hemmed in by the dogmatism of presumably shared rationality.

Discussion unhemmed, however, entails seriously considering the importance of emotional interchange as a necessary secondary component of communication. This means that policy deliberations should permit all speakers to address those matters of identity, family, culture, and/or status requiring full deliberation according for the development of participant identities. To reinsert the value of emotion into discussion entails contradicting a centuries old academic tradition of rationalist, social contract, liberalism, and trading it for a more pragmatic communitarian conceptualization of the political.

We must get beyond rationalist liberalism primarily because of the veiled emotions smuggled in that serve to stymie true deliberative debate in the ordinary, day-to-day practice of politics. As Mouffe (2000), Dryzek (2003) and other agonistic democrats (see Wagner and Karagianis 2005) make clear, the detachment of politics from the emotions, particularly for those for whom political rules truly constrain life possibilities renders politics sterile, provincial, and anti-democratic. To make the case

for emotional appeal in discussion suggests that political actors—citizens, bureaucrats, legislators—turn back to the *substantive* practice of democracy known in the *ekklesia* and the forum, not just imitate its form.

To remake the true forms of democracy captured in the *ekklesia* would be practically impossible in large polities.⁵⁵ However, the standard of some forms of homogenizing influences or homogenizing institutions are necessary for a democratic government, particularly if emotional appeal and the rhetoric of politics are to return full force. That is, there must be a constant assumed in the process, a useful basis for utilization of pluralism.

In the framework of pragmatic philosophy and communicative action, this basis is the shared vocabulary of experience. Specifically, there must be a minimally shared lifeworld, which is stable between the discursive partners. This lifeworld, this stable grammar, and vocabulary held in common, forms the background knowledge that underlies the market of communicative commodities (speech-acts) used by discursive partners. That we can accept speech acts assumes that we begin from such a shared objective and subjective vocabulary. To elaborate from Rorty (1982, 83), that we can communicate at all assumes that some of those questions that characterize the debates in professionalized philosophy on the mind/ body split-- such as, “Is my interaction with this table brown, rather than, as I had previously thought, the table being brown?”-- are left to the side as always already answered (Peerenbohm 2000). Likewise, that we may accept emotional appeals necessitates that we begin from a shared understanding of what

⁵⁵ As is well known, and oddly, debated, the homogeneity of the *ekklesia* required extensive exclusionary practices that contravene liberal standards of participation and equality.

emotions are, and how they shape our experience. There are certainly some problems with this requirement.

First, that discursive partners share a similar lifeworld does not automatically generate situations of discursive parity—each partner must also be committed to the value of discourse to begin with. In the estimations of theorists of liberalism and theorists of deliberative forms of democracy, the goodness of discursive parity is an unproblematic axiom drawn from the assumption that all persons' motivations are rational. To suggest that discursive parity is always attainable requires sharing the lifeworld, as the basic moral-ethical framework for interacting communicatively or socially at all. This assumption is unproblematic if the axiom holds (as it may very well hold) in estimations of ordinary political interaction between rational-legal motivated legislators and citizens appealing to legislators on such terms. In situations where this axiom is problematic from the outset, such as instances of inter-cultural communication between two actors with incommensurable metaphysics, such assumptions help us very little.⁵⁶

⁵⁶ Here it may be somewhat helpful to delve into the literature on multiculturalism and multicultural communication in order to elaborate on examples where this axiom “discourse is good” does not hold. Theorists of multiculturalism such as Taylor 1989, 1994, Kymlicka 1995, Rawls 1999, 2003 (somewhat), and Levinas 1969, 1981 have grappled extensively with this issue but, not unexpectedly have in most instances theorized a multiculturalism that is abstract from the consequences of lived experience in a multicultural environment. These major thinkers of multiculturalism have posited schema for reconciling differences (Rawls’ overlapping consensus) or coming to a meaningful appreciation of them (Levinas in particular, though Taylor and Kymlicka have substantive expertise to contribute), yet neither has described extensively how it is that citizens living in a multicultural environment “get along” day-to-day. For example, who has the right to arbitrate and on what grounds, what is essentially a cultural-practice based dispute between my neighbor (who likes to dry squid and fish on a rack in his back yard) and I (who prefer the absence of fishy smell and insects in mine)? How does the practice of an overlapping consensus (Rawls) or seeing me truly reflected in the other through unselfish eyes (Levinas) help an arbitrator of this dispute? More viscerally, how does either theory help us to get along with one another so that tensions do not escalate? Note Kymlicka: “In the areas of official languages, political boundaries, and the division of powers, there is no way to avoid supporting this or that societal culture, or deciding which groups will

Second, this assumption is problematic in the bureaucratic context for the reason that bureaucrats do not deal exclusively with individuals who share a commitment to the worthiness of discursive parity either consciously or unconsciously. Bureaucrats encounter, in their daily activities, individuals who for reasons of psychological, physical, or social defect may not have (or be able to express) a lifeworld shared in common, and individuals whose background knowledge is a lifeworld that is divergent from (or only infrequently convergent with) the secular, rational or legal. Those truly problematic identities, those individuals who are unable or stalwartly unwilling to communicate (those who theories of multiculturalism leave out oftentimes), do not evaporate under the weighty hand of theoretical efforts-- they “go somewhere.” That “somewhere” is often the system of bureaucratic assistance.⁵⁷

Clearly, if the shared lifeworld, thick rationality, rhetorical appeal, and a

form a majority in political units that control culture-affecting decisions regarding language education and immigration” (1995, 113). Kymlicka supports a practice of benign neglect which is not instructive for those persons—public administrators in many cases—who *must* arbitrate one way or another. Neutrality, one may say, is not an option. Thus, we return to the problem, what is the process, what can we do, when incommensurable facts of culture clash? What to do about the formation of organizations in a multicultural environment that is highly charged? How can one create, say, the multicultural pals? I would not go so far as to argue that communication and communicative action is a panacea for every social complaint, however, starting with the process of representation taken up in Chapter VII, there may be a possibility of meaningful resolution.

⁵⁷ What to do with a citizen who is unable to communicate with—to participate meaningfully at all—with the production of the state, and yet requires extensive support from the state, is a question to deal with in order for any theory of social justice or multiculturalism to have purchase. The example brought immediately to mind is of a man or woman of majority age, whose parents are deceased, and has (through extensive assistance from modern medical practice as well as extensive financial support from the state) severe cerebral palsy with multiple confounding conditions. This person would become a ward of the state, in most cases, to receive support and care through multiple state programs. And yet, this person has no “say” in the care they receive—not only are they unable to participate in their direct care but are unable to participate in the process of making the state, upon which they are completely reliant. They have no say in the lifeworld and no say in the system, save through the representation of their interests through an assigned state caseworker (or, if they are quite fortunate, a public non-profit volunteer). What, do we “do” with the citizen who is at once part of the state but is communicatively divorced from its production? This question is set aside for now, but will be taken up on subsequent work at greater length.

commitment to the goodness of discursive parity, are prerequisites for the remainder of discourse ethical communicative actions, bureaucratic client interaction between partners that do not share these values, will be problematic. Yet if the goal is to develop communicative social processes that facilitate representation, then directly addressing this problem is necessary. To achieve discursive parity requires that we, first, suspend the prior background knowledge presumed in common; and, second, focus on the objectives that motivate the discourse at all; and third, accept that true discussion (that discussion which can found representation) is multiply iterative.

To suspend the requirement of the full lifeworld in order to develop a situation where actors can potentially reach discursive parity on relevant issues—a situation of bracketed communicative action—places an alternative set of constraints on the bureaucratic participants in deliberation. Specifically, it requires that the participants bracket their previous moral-ethical commitments, do not attempt (via strategic action) to “smuggle in” these commitments in vague or duplicitous language, and concede to tell the full truth to one another. This demands that the participants be able to dissect their needs and statements of satisfaction from their original moral stance. This may be problematic for persons who see their religious/moral/ethical commitments as all encompassing, but satisficing on the grounds of attaining understanding of basic immediate needs is all that is required in first iteration interaction. In addition to committing themselves to the bracketing of the axiomatic bases of their lifeworld, this situation of bracketed communicative action demands truth and full information sharing.

While this may render the first iteration of communication less substantially meaningful, the bracketing of axioms allows for productive second iteration communication.⁵⁸

To prefigure an argument elaborated at greater length in a subsequent chapter, first iteration interaction does not achieve more than *modus vivendi* toleration at most. The purpose of second iteration interaction (theoretically and practically) is to ensure that the possibility of conversation continues. In second iteration, communicative partners attain true communication, deep toleration, inclusion, acknowledgement, intercourse, and the groundwork for representation.

In second interaction communication, there are deliberations between citizens and bureaucrats over matters of value, which offers to citizens an avenue for expression that may be more meaningful in the democratic sense. As Warren (1996) makes clear, due to restrictions on citizens' capacity to obtain relevant information, all citizens may not be able to participate fully in all policy discourses. Nevertheless, citizens, like their governors, will defend their interests and values, even if they lack formal authority to do so. In the context of a discursive democracy, this is a critical defense of the citizens' essential position—the citizen is always already an authority on his or her values and should be treated as such in all policy discourses. While first iteration interaction is centrally important, the value of representation (bureaucratic or legislative) for citizens lies primarily in the assurance that their values, their interests, count in the public interest and later public policy. This exchange of values is the content of second iteration communication that builds the basis of representation and the public interest.

⁵⁸ Yes, it is common knowledge that bureaucrat-citizen interaction is iterative, but it is helpful to acknowledge the content and process of interaction that can lead to active bureaucratic representation.

Conclusion

The initial conditions for communicative action described above set up the framework of deliberation as normative for the establishment of the public interest. These initial conditions ameliorate the obvious tensions that arise when defining the public interest as a compromise between the individual's definition of self-interest and interest collectively defined. These tensions are, in sum, questions about the validity of collectively defined standards of a) what is a legitimate interest, b) who the interested public ought to be, and c) how can we "know" if the interest is truly public or merely representative of a momentary domination by one section of the public or another?

To expand upon this, it is necessary to look closely at the definitions of self and public interests reached when asserting intersubjectively defined statements of interest. The intersubjectively defined public interest-- particularly one that conforms to the definitions of public interest given above and the strictures of communication described above-- is realizable only under the conditions of a discourse theory of public interest formation. As Habermas describes it, discourse theory

takes elements from both sides [liberal and republican] and integrates these in the concept of an ideal procedure for deliberation and decision-making. Democratic procedure, which establishes a network of pragmatic considerations, compromises and discourses of self-understanding and of justice, grounds the presumption that reasonable or fair results are obtained insofar as the flow of relevant information and its proper handling have not been obstructed. According to this view, practical reason no longer resides in universal human rights, or in the ethical substance of a specific community, but in the rules of discourse and forms of argumentation that borrow their normative content from the validity basis of action oriented to reaching understanding. In the final analysis, this normative content arises from the structure of linguistic communication and communicative mode of sociation (Habermas 1996, 296-297).

In this model of discourse theoretic public interest construction, one attends to both the liberal construction of an individual's own calculus for satisfaction and the individual has forecasted calculus of the interests held by others. The communitarian/republican element of discursive public interest formation suggests that the constitutive power of the community creates the background knowledge for the creation of an interest held in common. In this model, the individually calculated estimations of self and other regarding interest are combined (but not aggregated in the sense of utility or vote aggregation) to emerge intertwined through the common vocabulary of intersubjective norms.

The discourse theoretic relation of public interest formation requires that 1) public participants are coequal interlocutors who 2) arrive at the discursive platform of the public sphere arenas conscious of their own socio-political narratives that, 3) when interchanged in a dialogically appreciative fashion, 4) openly and truthfully inform other participants of the content of their self interests and their expectations of other's interests, and are 5) oriented towards the satisfaction of wants and needs *held in common*, not merely their own. This occurs in a public—that is, political—setting, the conditions of which inhere in the public sphere.⁵⁹

⁵⁹ It may be helpful to point out an historical link between the evolution of the public sphere suggested by Habermas in *Structural Transformation of the Public Sphere* (2001), and the emergence of the public interest as a politically important term of discourse in Gunn's recount of *Politics and the Public Interest in the 17th Century* (1969). For both Habermas and Gunn, the pivotal social changes that lead to the emergence of strident citizen critique of government was the post revolutionary period in 17th century Britain. Both point to the emergence of the political press and the recognition among individuals of their own capacity as political commentators. Gunn suggests that the unsettling of the monarchical power provoked the elaboration of a standard held in common by all formerly subjected to the standard of the

The success of these deliberations about competing procedural interests lies in the collective discussions of citizens who are able to not only develop and reflect upon, but also to agree to institutionalize, the agreements reached as well as procedures for further discourse. It is “successful” legitimation discourse if done without the coercion of strategic action or the resort to metaphysical badgering (such as the intervention of exogenous moral codes such as the appeal to revealed religion). It is finally successful if it results in an accord that institutionally protects the deliberative public interest.

This successful deliberation does not translate automatically into success measured as uncritical continued compliance with the discourse, primarily due to the structure of human interaction.

The structures of the public sphere reflect unavoidable asymmetries in the availability of information, that is unequal chances to have access to the generation, validation, shaping, and presentation of messages. Besides these systemic constraints, there are the accidental inequalities in the distribution of individual abilities. The resources for participating in political communications are in general narrowly limited. This is evident whether one examines the time available to individuals and the episodic attention to topics and issues with histories of their own; the readiness and ability to make one’s own contribution to these topics; or the opportunistic attitudes, affects, prejudices, and so on, that detract from a rational will-formation (Habermas 1996, 325-6).

monarchy. While he does not make the argument that the public interest discourse of this period was egalitarian or all-encompassing by any means, he does indicate that the newly found critical freedom of the discoursing public lead to multiple elaborations of the public interest as a common standard. Habermas similarly makes the case that the dialogue of the politically engaged—though not equal among all by any stretch—laid the foundation for later, more democratic, critiques of government by the secondary and tertiary actors of government. Though neither author connects strongly with the ideas of the other (both are decidedly disciplinary in their biases in these works), the historical correlation that a present author can draw from the discovery of the same historical circumstances leading to conclusions on the same theme appears to be more than simply coincidental. According to my estimation, while Habermas was concerned with the sociological and governmental developments that the emergent bourgeois public sphere brought about, Gunn was concerned with the philosophical and political content of the emergent bourgeois public sphere. Here I try to blend the notion of both content and process in my estimation of communication in the public sphere.

The infusion of the discourse theoretic model of participation with a communitarian ethic of full participation more readily accommodates those outside of the constraints of these structural variables by relaxing the extreme position of liberal democrats rooted in models of reasoned discourse as cover for elaboration of individually derived economic interests. Primarily, by reinforcing the tenets of democratic discourse ethics described above, all actors are able to appeal to independent and/or communal positions on policy positions. The discourse theoretic model does this by allowing the idea that individuals are able to choose rationally to agree with the standards of the community that has developed a democratic discourse on the topic-- that individuals can relinquish their individuality to the community standards on some policy positions when it is in their better interests to do so. This model allows more people to participate seriously as rational, independently relevant actors, even if they do not contribute an individually reasoned position, but rather lend their support to the norms of the community.

Discourse theory, in consequence, offers a method for readdressing the contentious issue of elite domination and political apathy by introducing the assumption that submission to elite dialogue or apathy on particular points is the expression of an authentic ethical position. I see as advancement over the models of public interest formation predicated on the aggregation (summation) of utility common to some definitions found in the political theory and public administration literature. Under the guide of discourse theory in the public sphere, the formation of the public interest can be both active and passive simultaneously. Important to the formation of public positions

on the collection of policy possibilities, this theoretical position relaxes the assumptions of the social contract theoretic model of general will formation that assumes access to information and argumentation, on all potential horizons, for all citizens. That is, defined through democratic discourse, the discursive public interest offers a more democratically defensible foundation for the public interest representative of the ethical-normative policy goals of the full public.

CHAPTER IV

COMMUNICATIVE ACTION AND THE RECONCILIATION OF BUREAUCRACY WITH DEMOCRACY

In the writings arguing for the importance of a public interest standard for public administration, a recurring theme is the idea that the public interest is, and should be, the standard to which all administrative actions should be oriented. As we expect, however, there are a multitude of competing models for the development and deployment of this standard. In recent literature that takes a managerial approach, the emphasis is on the deployment of the public interest standard through the emphasis on secondary values of efficiency, efficacy, and procedural equity of service delivery (Du Gay 1996). Development of the public interest standard has taken a back seat, despite the obvious reasons for the importance of democratic development of the standard itself over the deployment in the name of democracy. Among recently devised models of public interest development, more discursively focused models have been introduced, such as that offered by Goodsell (1990).

Given the central importance of the democratic public interest for the legitimation of the actions of the administrative state, it appears paradoxical that there has been little substantial, recent discussion in the public administration literature about the utility of the standard of the public interest as a truly legitimating factor for actions of public administration (Goodsell 1990). The lack of discussion however, is an

implication of unimportance. Goodsell, in order to remedy the neglect of public interest development, reintroduces serious debate about the concept of the public interest as central for the execution of good governance by public administrators.

Relying on Herring (1936), Souraf (1957), Friedrich et al (1962), and Flathman (1966), Goodsell makes the argument that the public interest is, and should be, a symbolic and verbal-discursive standard for the practice of public administration. Goodsell's argument for the symbolic function of the public interest suggests that use of the concept of the public interest in policy formulation lends symbolic legitimacy to the regime that seeks to abide by the standard. That is, by appealing to the standard of the public interest, we accept the government's policy development as adhering to transparent publicity that comports with accepted definitions of democratic legitimacy. For the purposes of this argument, however, the verbal-discursive description of the public interest is central. Goodsell suggests that, according to the verbal discursive notion of the public interest, when used as a signifier of discourse on government, the concept lends democratic legitimacy to the state through allusion to the following values held in common by individuals in the constitutional state: legal-moral, political responsiveness, political consensus, a concern for logic, a concern for effects and an awareness of agendas (1990, 103-106).

According to Goodsell, the legal-moral quality of the public interest lies in the use of the public interest as a standard that indicates compliance with the accepted norms of "good" and "law." "Use of the term public interest implies that, at the very least, the user is claiming to be law-abiding and decent" (1990, 104). That is, when a person (at

any level of the governance structure) uses the term public interest, we can assume that they 1) have and appreciate the concept of the public and the potential for an interest held in common by all members of the public, 2) that they are sensitive to, and are willing and able, to abide by a public interest standard, and 3) that they are willing to be held accountable to this standard should the need for legal or moral sanctioning arise.

The political responsiveness characteristic of the public interest indicates that political agents and representatives recognize the public in full and not simply those persons directly their constituency.⁶⁰ That is, they recognize the legitimacy and difference of interest concerns of each the individual as individual, individual as part of the community, and the full community itself. In addition, if public administrators (and representatives) act with the objective of democratically participating to reform the state to satisfy the ideal of the public interest, they must realize that they themselves are part of the affected and effective community of the public interest.⁶¹ When used in the action of political discourse, this characteristic of the public interest concept is closely associated with what Goodsell calls the characteristic of “political consensus.” For Goodsell, “public interest discourse not only requires officials to defend themselves in terms of what the public wants, it also requires contending groups within the public to defend their positions in terms broader than naked self-interest” (1990, 104). The political consensus requires that groups as agents agree to express their interests in an intersubjectively communicable manner that is debatable via multiple concurrent

⁶⁰ Constituency is defined here as those persons in a political agent’s/ representative’s district, donor community or clientele.

⁶¹ Warren (1996) considers this standard an integral part.

conversations within the community. The import of this characteristic lies in the idea of the public interest as a democratic, consensually defined standard with nearly universal normative appeal. The public interest so defined must be defensible on the basis of intersubjectively defined and agreed upon norms, not simply those defined by the atomized (utility maximizing) individual or a single interest community. The politically responsive public interest is independent of any one individual's or individual social groups' direct interest satisfactions.

Though the first three characteristics are of central importance for understanding the necessity of a democratic public interest, the remaining three are critical for understanding the content of such a standard. The “concern for logic” suggests that any appeal to the public interest standard be defensible through appeals to logic and rationality. These appeals rest on the grounds of suppositions that the speaker can communicate these characteristics as elemental parts of the public interest concept. This characteristic of logical defensibility requires that the public interest itself be made of logical and rational content. If necessary, a disarticulated public interest is useful in defense of any particular conceptualization.⁶² This particular characteristic is problematic in the discursive public sphere. Particularly given the requirements of an agonistic public sphere described in an earlier chapter—that western systems of civil discourse, non-emotive rules of rationality, and linear-analytical systems of logical defense are inadequate to plural expressions of interests in a multi-identity polity, such

⁶² Determining the strictures of rational or logical content to public interest debate is beyond the scope of this section of the chapter. I confront the problem of rationality in debate later in this chapter and in the next.

as America. Though Goodsell's requirements seem to permit a less agonistic form of discourse than is perhaps desirable, the basic requirement that a public interest standard be defensible according to an intersubjectively accommodating standard does not seem to transgress even the most strident of agonistic expectations.

The "concern for effects" suggests that, when speakers use the concept of the public interest in political discourse, they are recognizing the broad applicability of consequences for all who are part of the public, whether currently engaged in the discourse or not. According to this characteristic, the use of the public interest standard is valid if, during the conversation, we put forth the range of consequences of a policy for all involved, not simply for the direct participants or an elite class of claimants. That is, the concern for effects requires that we take the Rawlsian (1999) demands of justice as fairness, along with the Deweyan (1927) admonition to consider the full public in all of its diversity as good in its consequences, seriously. This standard requires that the consequences for the "least" person in the public be given due concern with a weight proportional to those of the "greatest" person in the public. This does not necessitate consideration of an endless stream of fantastic consequences *reductio ad absurdum*, but that all participants make good faith efforts to permit all perspectives a voice.

Lastly, the standard of agenda awareness indicates that use of the term public interest in public discourse, requires the speaker's recognition of the necessarily provisional quality of the interests that s/he understands to be represented in the public interest at present. If the speaker abides by the rule of discourse theoretic use of interests based on the standard of agenda awareness, s/he will recognize the problems of both

limited time horizon and the potential for infiltration into the larger public of sub-altern publics not currently recognized.

We can get around the potentially homogenizing tendencies suggested by Goodsell by introducing the concept of discourse theory.⁶³ The most appealing reason for the use of a discourse theory of public interest formation as ethical normative guidance in public administration is that it is more fully democratic in its elaboration than are standards previously devised based solely upon aggregative models of the defined public interest. The discursively defined public interest, that is, a deliberative model liberated from the elitist and limiting constraints of traditional models of democratic participation⁶⁴ and common will formation,⁶⁵ is defensible vis-à-vis all communicating actors in the space of the state. The discursive model, as opposed to the aggregative model, opens the conversation on interests to more participants and more modalities of participation. If we accept the equalitarian needs of a modern democracy, particularly given the fully administered character of the modern democratic welfare state, where the effects of sanctioned administrative power touch all actors in the space of the state, then the discourse theoretic model is almost certain to be more democratically appealing both in content and character.

The imperative for the discourse theoretic model is clear if we accept that all citizens should have a voice in government. For administrative power to have legitimacy over their lives, it is imperative that all citizens (and non-citizens residing in

⁶³ Goodsell (1989), perhaps despite himself, does imply throughout a “typical” homogenous form of interaction that presumes much of each participant’s competencies, which, in a truly diverse state, may be too simplified.

⁶⁴ Majoritarian voting schemes for example.

⁶⁵ The will common to all rational persons, as in the Rousseauian model of Social Contract theory.

the state-space) have a voice in determining the legitimating standards for the exercise of administrative power. To do so I suggest that we must revisit the possibility of a public interest building communicative power indwelling in the lives of all possible participants (citizens, non-citizens, disabled, trans-gendered or otherwise non-typical in identity characteristics). The imperative for a fully democratic public interest is arguably most important in the exercise of administrative power over individuals that have not voluntarily surrendered their autonomous sovereignty to the institutions that reify administrative power in their lives. It is also important in situations where some may have effectively surrendered their autonomy to a given state but do not perceive that administrative actions taken on their behalf are, in fact, legitimate.⁶⁶

The discourse theoretic understanding of public interest formation suggests that all public participants are coequal interlocutors endowed with their own unique socio-political narratives that if mutually exchanged for understanding builds the basis of public participants' own potential vis-à-vis the satisfaction of the wants, and needs they hold in common (Habermas 1981, 117). The discourse theoretic construction of the public interest is the creation of a symbolically meaningful, common standard for joint action that acceptable by all who willfully acknowledge themselves as part of the larger system and lifeworld of the public.

As will be further developed, the discursive public sphere, particularly when interpreted as a model of participatory democracy (as is done by Dryzek, 2003), is arguably more democratic in a plural environment than are aggregative or majoritarian

⁶⁶ Members of the Freeman's movement for example.

models of participatory democracy. In particular, the discourse theoretic model of democratic participation relaxes the assumptions of rationality and trust that are implicit in these other models. Within Habermasian discourse theory, the standard of rationality requires only that participants be engaged in reflexive and mutually accommodating discourse that culminates in learning in common. However, this communication must abide by the standards of discourse ethics. Fortunately, the strictures of discourse ethics are broader than traditional assumptions about democratic participation suggested by empirical democratic theorists, such as Dahl or Schumpeter (Held 1996). Participants act rationally in the discursive model when they communicate—this communication does not have to take a traditionalist form such as voting or participation in the selection or informing of leaders. By enhancing the notion of rational participation to include all forms of communication, many more people become relevant political actors than is the case in models of democracy based on the traditionally elitist assumption of strictly rational participation in conventional political processes.

Particularly in the context of aggregative and majoritarian democracy, those left outside of the aggregate or the majority must trust in the imagined constitution of their social contract position to ensure that those in the majority will not seek to define their minority interests out of the model of public interests. This is particularly true, if we assume the Schumpeterian definition as the democratic ideal, that democracy is the “institutional arrangement... which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will” (1942, 250) or “that institutional arrangement ... in which individuals

acquire the power to decide by means of a competitive struggle for the people's vote' (1942, 269)" (Krouse 1982, 444). In such a case, the participants (citizens only in this model) must trust in their democratic counterparts to establish institutional arrangements that are favorable to the fulfillment of their interests as well. Particularly in the definition of the common good, the problem of majoritarian democracy becomes clear: if a majority elects representatives of itself who are motivated only to perform their good, the political process will exclude minorities left to the mercy of their majority counterpart's representatives to acknowledge their voices at all. That this state of the tyranny of the majority dominates suggests that the public itself, to paraphrase Dewey, no longer is the *democratic* public (Dewey 1927; Guinier 1994).

The use of Goodsell's qualities suggests that, through the medium of intersubjective discourse theory, participants may come to know the public interest by engaging in active deliberations on the many qualities that the concept signifies. The discursively defined public interest, by definition, takes into account each of the characteristics elaborated upon by Goodsell—legal-moral awareness, political responsiveness, political consensus, the concern for logic, the concern for effects and agenda awareness. In discursive deliberations, citizens must offer mutually understandable reasons and must abide by the standards of discourse ethics. Practically, this means they will appeal to the shared vocabulary of legal-moral codes, the concerns for logic and effects (rationality and appreciation of consequentialist ethics), the importance of consensus as a standard toward which all participants should strive, and will appreciate the range of potential policy positions brought to bear.

Goodsell's standard of political responsiveness, however, is problematic in the democratic conceptualization of responsiveness as full representation. Though I will not take up the argument for full representation as full responsiveness, an argument exists for the importance of bureaucratic responsiveness for development of a meaningful public interest standard. In taking bureaucratic representation seriously, the political responsiveness standard reinforces demands that politics and the definition of relevant political actors be considerate of the bureaucracy as a crucial institution in political life (Du Gay 2000, 2005; Peters 2001; Rohr 1986; Terry 2003, Wamsley et al.1989; Wamsley and Wolf 1996). As it stands, even in the formulation of Goodsell (1990, 104), the actors assumed to be responsive are not the administrators themselves, but their "principals" in political positions. The persistence of bureaucratic exclusion in the political discourse prevents the full realization of the democratically defined public interest. That is, if we define the public interest with the full force of discursive democracy behind it, then public administrators themselves must become intersubjective participants in the deliberation about and expression of the public interest; bureaucracy and democracy must be reconciled.

If we take seriously the enormity of the public interest as the standard for all politics, the problem of reconciling bureaucracy and democracy becomes one of reconciling the actions of a limited section of the public with the entirety of the public. The promise of the theory of the democratic, discursive public interest, then, is that it stands to reunite theoretically the public of the government with the public of the critical public sphere through the idea of full communicative participation. The public interest

defined in the communicative public sphere that meaningfully includes the administrative state improves the chances for a reconciliation of bureaucracy and democracy because it places the democratic standard for the bureaucracy at the front-end of the governance process where it is effectively isolated from the vagaries produced by the rise of interest group liberalism (Lowi 1969).

Many recent theories that attempt reconciliation of bureaucracy with democracy rely on the ex-post model of control of administration.⁶⁷ That is, administrators are assumed to be acting democratically when they respond well to controls placed upon their actions by the legislative, the executive, the courts and administrative due process—those branches and patterns of government that are determined to be definitively democratic.⁶⁸ However, a faulty assumption of ex-post controls of the bureaucracy is the belief in the possibility of fully democratic participation. Ex-post control of the bureaucracy assumes that, representatives' actions incorporate the interests

⁶⁷ The expansive literature of the political control of the bureaucracy I will not catalog here. For the purposes of exposition, I draw much of my understanding of the political control literature from Epstein and O'Halloran (1999); McCubbins, Noll and Weingast (in their various combinations); Wood and Waterman (1994); Bendor (1988, 1994); Bendor, Taylor and Van Gaalen (1985, 1987); Bendor and Moe (1985), and Moe (1985).

⁶⁸ West 1995 offers a comprehensive look at the procedures and institutional controls of the bureaucracy that appreciates both the impetus for political control as described by scholars of political control of the bureaucracy as well as the difficulties of public administration recognized by scholars such as Goodsell (1994). Note: "Given the realization that agency decision making is political, balanced interest representation has arguably supplanted accuracy and consistency as the goal of administration. Participation in the context of administrative due process is restricted by a variety of factors, however, including its costliness and its confinement of input to the consideration of single, well-developed alternatives. The most fundamental deficiency of the interest-representation model is that participation is ultimately constrained by the central assumption of the adversary process that decisions are demonstrably correct or incorrect. Indeed, the inherent difficulty of reconciling administrative law with the realities of bureaucratic politics is underscored by the fact that the extension of due process to agency policy making has frequently been justified on instrumental grounds as well. Whether or not devices such as formal hearings and decision making on the record are effective means of getting at the truth on the empirical issues that inform actions such as rulemaking, they necessarily inhibit the resolution of conflicting interests" (West 1995, 206).

of all subject to bureaucratic action, even though representatives owe allegiance to a small body of constituents. Note the following criticism of representation through administrative procedures offered by West:

Participation in the context of administrative due process is restricted by a variety of factors, however, including its costliness and its confinement of input to the consideration of single, well-developed alternatives. The most fundamental deficiency of the interest-representation model is that participation is ultimately constrained by the central assumption of the adversary process that decisions are demonstrably correct or incorrect. Indeed, the inherent difficulty of reconciling administrative law with the realities of bureaucratic politics is underscored by the fact that the extension of due process to agency policy making has frequently been justified on instrumental grounds as well. Whether or not devices such as formal hearings and decision making on the record are effective means of getting at the truth on the empirical issues that inform actions such as rulemaking, they necessarily inhibit the resolution of conflicting interests (1995, 206).

Though the administrative procedures put into place, along with the top-down control by political principals are democratic in practice, these practices represent barriers to participation in the realization of full democracy.

Further, as Downs (1967)⁶⁹ and the many later theorists of democratic government in America show, the interests of elected officials lies with reelection. The demonstrated interest in reelection appears as the adjustment of public policy positions to reflect the wants, needs, or desires of the interests of a limited (voting, elite) public. Reelection interests are ill served through the accommodation of limited and non-vocal interests; service to a broadly construed public interest that includes a vast number of persons who are not part of the critical constituency an official seeking re-election is not a goal of representative officials in an electoral democracy.

⁶⁹ See also Colm (1962)

Incorporation of the interests of the full public does not occur through ex-post controls. At worst, ex-post controls reflect the wants of limited publics of vocal economic consumers, not the full public. At best, ex-post controls echo the wants of the majority of the public (Nachmias and Rosenbloom 1973). Downs himself warns of the tendency towards majoritarianism in the public interest:

Anything that is in the long run detrimental to the majority of citizens cannot be in the public interest, unless it is essential to the protection of those individuals rights included in the minimal consensus. This principle of long-run majority benefit follows from the principle of majority rule, which is in turn derived from the axiom that each man has an 'ultimate' value equal to that of each other man. The principle of long-run majority benefit also provides the basic link in a democratic society between the public interest and the private interests of the citizenry (Downs 1962, 9).

The persistence of a conceptualization of democracy as actualized through the basic democratic venues such as representation and voting fails to catalyze progress towards a state endowed with full democratic "control" of its un-elected officials. The articulation of a public interest standard, drawn from the Habermasian public sphere, comes closer to the fully democratic mode of control sought by administrative theorists. The open discourse of the public sphere, grants to all citizens the potential to contribute to the public interest through their speech and action. Even the most minimally engaged consumer is permitted a voice (however minimal) in the articulation of the public interest through his/her consumption of media, (non) compliance with regulatory law, and interaction with the officials that compose the street-level bureaucracy. The enhancement of the communicative public sphere as the place where the standards of

democratic government are forged circumvents the persistence of divided publics and majoritarianism in American government by de-formalizing the modes of participation.

Citizens as Bureaucrats and Democratic Participation

The “de-formalization” of participation demands that we look beyond ordinary channels of representation and control as access points. If we consider public administrators as part of these access points, then public administrators become first-line points of access between the state and its citizens. As subsections of the public administration literature on deliberative modes of citizen empowerment suggest, however, access to citizens and citizen expectation is far from easy (Hill 1991; Tyler 1994). Conventional positions on the bureaucratic relationship to the public suggest that bureaucrats are responsible for implementation of the law *at* the public, not *with* or *for* the public. This view, I argue, is shortsighted and neglects the productive role that bureaucrats (as citizens) play in the making of the legitimate democratic state. I suggest that bureaucrats are participants in the creation of the public interest in two ways, first, as citizens themselves and, second, as facilitators of deep citizenship among “ordinary” citizens. Bureaucrats, contrary to the expectations of adherents to anti-bureaucratic rhetoric (in its many forms, which will be elaborated upon shortly), should be considered public participants with a unique role vis-à-vis other citizens and the act of legislation.

The concept of a citizen-bureaucrat is intuitively appealing to many. Yet, unfortunately, the concept has been subjected to decades of anti-bureaucratic rhetoric aimed at driving a wedge between those in power and those “out of” power. According

to the rhetorical flourishes of anti-bureaucratic stances, the similarities between citizens and bureaucrats stop at minimal citizenship or personhood status.⁷⁰ Citizenship in itself is cast as merely a minimal characteristic of affiliation between citizens and bureaucrats and a form of pseudo-citizenship status is invoked within efforts at derogation of bureaucrats as a class of citizen “others.” The tradition of anti-bureaucratic rhetoric has tried to separate the notion of bureaucrats from their citizenship status broadly defined as “being one of us”.

The rhetoric of bureaucratic separatism is rife with quips about the headless, soulless, and personality-less bureaucrat as a robotic automaton who does not occupy the world of “ordinary” people. The perpetuation of zombie or machine metaphors for bureaucratic citizens serves primarily to enforce the notion of the bureaucrat as a fearsome member of a separate class of person. Much of the anti-bureaucratic rhetoric emanates from misapplication of a misreading of Marx’s “theory” of bureaucracy. According to this reading, Marx explicitly denies the positive role for bureaucracy prominent in Hegel’s conceptualization of the civil society (Duquette 1989, Leibich 1982, Shaw 1992)). While it is verifiable that Marx denies that bureaucrats have an expressly positive role in society, he does not suggest that they occupy a separate class of person that must be revolted against as part of the superstructure. The misapplied reading however, makes this suggestion an assertive point of fact—that bureaucrats are a class of persons against whom the proletariat should rightly revolt (Leibich 1982).⁷¹

⁷⁰ It is difficult to point to any one definitive text that defines or articulates the stance “anti-bureaucracy.” It is, as I make clear later in the chapter, a “mood.”

⁷¹ Leibich offers a thoroughgoing analysis of the role of bureaucracy in the thought of Hegel and Marx, much of which informs my analysis here, but which I cannot go into for issues of space. Nevertheless, the

This perversion takes a particularly strident and shrill form in the work of Bauman (2001). Bauman's basic argument is that bureaucracies (as symptoms of modern rational society itself) are internally hardwired toward genocidal action. However, in stark contradiction to Bauman's thesis, the tradition of anti-bureaucratic rhetoric of which Bauman is a part suggests it is legitimate to hold the view that bureaucrats are a class of people against whom a genocidal urge is appropriate in a democracy. In Bauman's work, the only truly justifiable genocide is one against those employed in the public service. This most vitriolic example of the tradition of anti-bureaucratic rhetoric attempts to quash the intuitive expectation of the bureaucrat as a citizen while ignoring both its own genocidal justificatory language and exclusionary impulses. Simultaneously, Bauman and others also ignore the assessments of bureaucracy offered by the litany of public administration scholars committed to the study of bureaucracy as legitimate institution of government.

The Anti-Bureaucracy Disposition

Anti-bureaucracy is not itself a coherent idea, but is rather a persistent mood in the thought of multiple political and social theorists. Following the definition provided by Oakeshott, anti-bureaucracy is a "disposition" (1991, 407) that runs like a current

following is important enough for quotation at some length here: "The fact of Marxism today is almost invariably connected with the problem of bureaucracy. ... Indeed the notion of the bureaucracy as the "new class" and, more specifically, the new ruling class has grown from the status of a metaphor to that of a thesis, on the right as well as the left. At the same time, most accounts lead one to the conclusion that the problem of bureaucracy was one relatively underestimated by Marx himself. ...Marx's references to bureaucracy are few and far between and [that] together they do not add up to a theory of bureaucracy (1982, 77)." Liebich establishes here that the reading of Marx's critique of Hegel's *Philosophy of Right* as being vehemently anti-bureaucratic is a misunderstanding of the objects of Marx's true concern, "representation, public opinion, and constitutionalism."

through the thought of liberals, libertarians, conservatives, democratic theorists, economic rationalists and post-modernists alike. While the reasons for the persistence of anti-bureaucracy in each of these traditions differ, particular common themes endure. Of these themes, a rejection of hierarchy and inequality, rejection of non-elected “interference” in the project of politics, and a belief in the a priori neutrality of procedures and laws, are common to the disposition. Summarization of the fullness of particular elaborations on anti-bureaucracy is beyond the scope of present argument. As such, I will focus on the dominant themes listed above rather than on the thought of a particular scholar or school specifically.

The Rejection of Hierarchy and Inequality

The rejection of hierarchy and inequality finds anti-bureaucratic thought in two primary ways. First, the rejection of hierarchy supposes that, in democratic and republican forms of government, no one citizen is above another. Drawing upon the post-feudal system of governance and economics, the rejection of hierarchy is wedded to a belief in the equal rights of men over against any natural or given set of stations. The rejection of hierarchy blends with rejection of the possibility of a class or caste system in the organization of the state.

The rejection of hierarchy is easily justifiable on the grounds of liberal or democratic political theory. The rejection of inequality parallels the rejection of hierarchy. To reject inequality is to reject the notion that any one citizen can have any more or less power vis-à-vis another. In other words, the rejection of inequality assumes

that the thoughts, wants, needs, actions and articulations of citizen A will always be held at the same constant value as those of citizen B. This rejection links also to the belief in equal rights of all persons as voluntary partners to a contract or covenant (Cooper 1991, 154-157). The contractual and covenantal systems suppose equality but say little about the persisting need for hierarchy even under the auspices of covenantal forms of decision-making. However, the implementation of a liberal or democratic form of government renders the rejection of hierarchy a knotty problem. As theorists of organization often point out, hierarchy is a persistent fixture in decision-making institutions.⁷² The task of decision-making is emboldened by hierarchical frameworks in which the situation of full equality is difficult to realize.

The notions of contractual and/or covenantal forms of social political ordering have become constants in the articulation of the structure of the modern state. The difficulty of articulating a covenantal relationship in particular has provoked change in the language of discussion from one of contracts and covenants to a language of liberal or democratic rights. In terms of specific traditions of thought, the development of the idea of the bureaucrat as an "other" has deep roots in underlying theses of both political liberalism and governance by democratic means. These tendencies are, simply stated, liberal exceptionalism and democratic gravitas.⁷³

The idea of liberal exceptionalism suggests that all persons in a liberal polity have an exceptional standing vis-à-vis all others. By virtue of this unique individuality

⁷² See Hatch 1997, 269-290; Perrow (1986, 29-46), Scott (2003, 41-52; 160-169).

⁷³ These two terms, while not intended to be lasting neologisms, I use to clarify what it is I mean in language that is not "pre-loaded" by another thinker.

bestowed upon the liberal individual by existence alone, no one person can treat another justly when treating all in the same manner, with no thought to exceptional circumstances. We find the roots of liberal exceptionalism in the understanding of the liberal individual as one who is at once a member of a self-constituting group but is also outside of the group as an individually valid claimant upon the norms and actions of that group. Expectedly, this uniqueness ties into the politics of identity, recognition, and interests.

The liberal individual, in order to be satisfied in his/her context as a political actor, requires the recognition of his/her independent identity's contribution to the livelihood of the groups against which his/her identity markers are defined. This form of exceptionalism is rooted in what Berlin calls the heteronymous condition. Heteronomy arises from the tension between the needs of liberals as fully autonomous individuals and liberals as communally constituted (and sanctioned) individuals. "Individuals... can feel free and secure and see themselves as self-governing only if they live within a social setting which is theirs" (Tamir 1998, 282). Thus, the liberal person must feel at once separate (and therefore exceptional and distinct) from the social setting and the social rules of that setting, but also as a key constitutive part (and therefore, again, exceptional) to that social setting.

The difficulty that liberal exceptionalism encounters with bureaucracy is that, by nature, bureaucratic rules are fixed in a context and time, unmovable with respect to each individual's claim. The liberal claim against bureaucracy is that the identity of an individual, with all of his or her attendant rights and demands, must have purchase over

the actualization of particular rules, which individuals themselves must help to constitute. With respect to the liberal encounter with bureaucracy, the individual must be able to create the system, and then break with the system at will, with no further explanation than the recourse to individual circumstance as right.

The liberal exceptionalist concept, however, stands in contradiction to the contemporary efforts of theorists of political liberalism to establish an anti-perfectionist liberal pattern based upon procedural liberalism. Procedural liberalism seeks to establish the recognition and treatment of all liberal individuals equally under the same procedural rubric without the “smuggling in” of any conceptualization of good through the language of procedures. As the story goes, the state treats all persons equally with respect to their negative liberties while taking great pains to avoid imposing any conceptualizations of what one should do with those liberties (Appiah 2005, 156-170). As Sandel simply summarizes, “This [procedural liberalism] is the liberalism that insists that government should be neutral toward competing conceptions of the good life, or, in the philosophers’ parlance, the liberalism that asserts the priority of the right over the good” (Sandel 1999, 210).

This procedurally equalitarian notion of liberalism emerges because of the attempts of liberal thinkers to square their demands for exceptional degrees of self-defined autonomy with their simultaneous demands for procedural equality and justice as fairness. As Taylor suggests, the procedural state is a logical (though not always preferable) way out of the problem of defining feasible and universalistic

conceptualizations of any moral or prescriptive standards of living in a liberal environment.

If our under-standing [sic] of the citizen's roles and rights abstracts from any view of the good life, it avoids endorsing the views of some at the expense of others. Moreover there is a common terrain on which all can gather: Respect me and accord me rights solely in virtue of my being a citizen, without regard to my character, outlook, or goals, not to speak of my gender, race, sexual orientation, and so on (Taylor 1998, 151).

Procedures, in this view, reconcile the need of liberals to feel that their individual identities are recognized and protected from the potential encroachment of others' conceptualizations of morality and the good, the construction of which they have not individually been part. However, the fault of procedural liberalism is that it fails to make reasonable headway towards the satisfaction of the liberal requirement of anti-perfectionist constitution (or codification in general) of these procedures themselves. That is, the failure of a procedural form of liberalism lies with its naïve belief in the non-neutrality (always already perfectionist tendency) of procedure/ law and its implementation.

The procedural liberal argument against bureaucracy is less clear than is the ordinary rejection of hierarchy and inequality. Procedural liberals, on the face of their arguments, will not be against the notion of bureaucracy as merely a system of rules in institutions. However, the actualization of these rules is problematic when procedural liberals confront the underlying heteronomy of liberalism—that the individual must be part of the construction of procedures yet must stand as an exception to the procedures

that they themselves have constructed. While in the ideal procedurally liberal situation, the individual may freely interpret the rules themselves while participating in the ongoing community adaptation of procedures to fit the changing social context, this is not easily realized.⁷⁴ To elaborate, in the creation of a bureaucratic state that does or does not assert the priority of one form of good over another, the perpetual reflection upon procedures itself asserts a form of goodness that claims that constant adaptation to the individual's context is itself good. The inevitable challenge to bureaucracy from this variant of liberalism is that bureaucracy, when implementing procedures (as is its primary function in society), must assert that something/ someone is more or less acceptable than is something/ someone else.

While liberal exceptionalism stands against an assertion of priority for or a perfectionist definition of the interaction between the state and the liberal citizen, democratic gravitas is a quality of the political person himself or herself. The concept of democratic gravitas suggests that the decisions of all persons in a democracy are of equal worth if only by virtue of their self-formation and subsequent performance as a member of the demos. Democratic gravitas simply put suggests a notion of symmetrical seriousness of all decision-expressions put forth by members of the demos. This practice underpins the organizational logic of most theories of participatory democracy,

⁷⁴ The definition of reflexive which will be used throughout this work is one I draw from Mead via Aboulaifa (2001): "For Mead, although many animals have the capacity to gesture to each other, human beings are capable of reflexively responding to symbols, which most often occurs through vocal gestures. I can hear my words as I speak, and as I speak, I can see your response. A capacity for responding to one's own gestures as the other responds to them emerges, and with it, there develops a consciousness of meaning based on a functional identity of responses. One learns to anticipate the responses of others and thereby also learns to respond to oneself as if one were the other" (2001, 65).

including majoritarian and proportional representation. For example, according to the theories of participatory democracy that take voting for representatives to be the ultimate democratic act, all votes ought to be counted equally regardless of the seriousness of the voter's intention to uphold and respect the regime for which s/he votes. Nor must there be consideration of the seriousness of the voter's efforts to inform themselves of the content of the policy platforms they are voting for in the form of a representative person(s). The quality of gravitas possessed by the democratic person is non-negotiable, even given variations in sincerity of an individual's participatory effort. While strong theories of democratic citizenship suggest that, the true democratic citizen is both informed and sincere in his or her decision expressions, the fact that a person is neither informed nor sincere does not and cannot negate their vote.

Similarly, theories of participatory democracy, that interpret participation in conversation or discourse as the essential act of democratic decision-making, suggest that all expressions seriously contribute to the discourse in a symmetrically worthy way. Particularly within theories of democratic participation that assume an agonistic view of the democratic situation, the "reasonableness" or "rationality" of an expression does not grant to the speaker any more or less weight in the conversation (Mouffe 2000, Young 1990). These theories, regardless of their interpretations of the importance of one act over another (voting or discourse); require a grant of equal seriousness to all contributions, all participants, and all forms of participation in the democratic space.

Embedded in the disposition of anti-bureaucracy, of which the belief in liberal exceptionalism and democratic gravitas are part, is the belief in equalities of power at all

costs, potential and consequence in decision making among liberal or democratic citizens in the polity. Liberal equalitarianism and exceptionalism does not easily permit the justification of a regime that explicitly accepts inequalities, hierarchy, and clear demarcations of power. The outgrowth of the equalitarian liberal position has been the steady rejection of institutions, theories, and practices that do not appreciate or facilitate individually reified equality as a primary good. Democratic gravitas, likewise does not permit the justification of a regime that permits the ranking of one person's value to the state over the other. Democratic gravitas rejects the notion of any one citizen or group of citizen being "more equal" than others. The consequence of the persistence of these thoughts has been the rejection of bureaucracy as institution and practice on the basis that it does not facilitate the convenient satisfaction of all individual's expressions equally. Rejections of rights or material claims by members of the bureaucracy seemingly merit the cry from citizens that "bureaucracy" itself is the cause of the inconvenience, not the incompatibility of the request and the interests of the full community itself.⁷⁵

⁷⁵ Another tendency attached to liberal exceptionalism and democratic gravitas in the tradition of anti-bureaucracy is the belief that bureaucracy (and indeed government in general) is a "magic goodies creator" which should be available for immediate dispensing of material or social goods on an "on-call" basis. In much of liberal theory, it seems to be that government itself has lost status as an "entity" with rights, claims, or needs. Such a view fundamentally rejects the possibility that there could be such things as a public, and more importantly, a public interest. Interests, for modern liberal thinkers, are individual, ad-hoc, and inalienably justified by the existence of the person as person separate from any community concern.

The Rejection of Bureaucratic Interference

Two dominant themes list under the heading “bureaucratic interference”. The first theme is the reification of the politics-administration dichotomy or the division of politics into reflective and active phases. The second is the expectation that production in the private (market) environment is more efficient than is production in a public setting and that bureaucratic production of government interferes in the natural tendency towards efficiency that would be found in a competitive system free of rules. A third, less prominent theme is the expectation that bureaucratic employment interferes with the natural progression and goodness of individual’s personalities and selves. A fourth and final theme of bureaucratic interference is that bureaucracy itself is an inherently conservative institution that stymies the “inevitable” progression of the individual and an individualistic society, with its tendency towards rules and traditions.

The politics-administration dichotomy is a persistent theme in public administration literature as well as in the literature on political institutions.⁷⁶ In short, the politics-administration dichotomy suggests that politics include two phases and two classifications of institutions. The first phase is a reflective or political phase where citizens and their (representative) legislators deliberate on the meaning, content, and applications of law. This phase of politics many consider the historically legitimate form of politics in a liberal, democratic, and/or constitutional system. That is, politics is legitimated by participation of citizens in the reflection and eventual codification of law;

⁷⁶ A summary of the politics-administration dichotomy and some of the influential research on this model (and its eventual debunking) can be found in Frederickson and Smith (2003); Martin (1988); O’Toole (1987, Rosenbloom (1993); Sayre (1958); Svava (1998); Waldo (1988).

all other acts of politics should follow directly from the standards and acts specified during this phase.

The second phase of politics is the active implementation of the laws developed during the reflective codification phase. This phase, per the politics-administration dichotomy, is divorced from reflection by either citizens or implementers themselves and is merely the performance of actions already concretely specified. The active or administrative phase of politics is legitimate only if there is no modification to the law specified in the previous phase. The assumption that guides the assertion of political legitimacy and potential illegitimacy of the administrative phase is the level of (indirect) citizen control and involvement in each.

The politics-administration dichotomy assumes that citizens are critical to the process of politics only within the reflective phase and assumes that they are passive “takers” of politics during the administrative phase. As citizens are uninvolved in the implementation or administration phase, any adaptation of the law previously developed is taken to be a subversion of the original intents and wants of the citizenry, and therefore illegitimate in the context of a representative-controlled system of government. The adaptation of law during the active phase of politics suggests to some a violation of the original covenant of citizen sovereignty over the political. Preservation of the split between these phases theoretically protects this covenant by eliminating unaccountable (non-covenantal) interference in the actions of the governors over the governed.

Two classifications of institutions underpin the estimations of the politics-administration dichotomy. Simply put, they are the institutions of accountable and

covenantal politics and the institutions of non-accountable and extra-covenantal administration. In the formulation of the politics-administration dichotomy, the accountable institution (such as an elected legislature) is removable through the application of force by citizens. In the situation of the non-accountable institution of administration, citizens have no direct control over the membership of the institution, but must first go through the institution of politics. The indirect relationship of citizens to administrators underscores the distinction between the typology of institutions as political-accountable and administrative-unaccountable (Behn 2001; Burke 1986).

The role of the politics-administration dichotomy in the continuation of the anti-bureaucracy disposition lies first in the failure of the idea to capture properly the nature of political institutions. Crucially, the politics administration dichotomy takes as given that legislatures formulate concretely specifiable laws useable as procedures with clear demarcations of acceptable and unacceptable behaviors under such law. However, it has become almost axiomatic that legislatures do not formulate law clearly or with great specificity as this undermines the project of legislators themselves to continue to be re-elected. The reflective phase of politics, contrary to the expectations of the dichotomy, is also the reactionary and the self-promoting phase, easily exploited by political actors who believe themselves outside of the mechanisms of democratic accountability. Given the mistaken configuration of the politics side of the dichotomy, the active administrative side of the equation is also mis-specified. Specifically, the institutions of administration cannot implement directly what is not directly stated. The active administration of law remedies vague legislation through interpretation, a practice

exploited by legislators, intent upon shirking their original responsibility for designing specific legislation in protection of citizen values. The politics-administration dichotomy, as part of the disposition of anti-bureaucracy, sets up the very real possibility of bureaucratic scape goating to cover for legislative evasion.

Contributing to the disposition of anti-bureaucracy is the near-axiomatic belief that capitalist market systems dominated by competition among private providers will naturally tend towards the production of goods with the least waste, highest quality and maximum efficiency possible. This line of thought suggests that the market system is capable of provision of all goods and services, even “public” or “common” goods such as national defense. Much of the literature proposing a model of government based upon the privatization of public bureaucracies argues that the private production of goods and services is more efficient than is production in the public sector. It is common in these lines of argument to find suggestions that private sector organizations produce goods and services more quickly, with more accountability for results and with more attention paid to customer needs (Osborne and Gaebler 1996). However, many of the goods produced by public bureaus are primary goods unattainable in the private sector such as social justice (distributive and redistributive programs) and national defense. Assumed in this model is that short-run gains of efficiency and maximization of customer values supersede values of long-term stability or predictability of good and service provision (Birkland 2005; Lowery 1998; Straussman 1981).

The third theme of anti-bureaucracy rooted in an expectation of bureaucratic interference is that the condition of employment in a bureaucracy is damaging to the

natural expression of individual personalities and identity/ self-hood. The diseased bureaucratic condition is unacceptable to the truly autonomous individual. More than that, some suggest that the conditions of employment in a public bureaucracy render the employee “headless and soulless”, seeking after only “control and efficiency” to the detriment of commonly held values such as “justice, freedom, violence, oppression, illness, death, victory, defeat, love, hate, salvation and damnation” (Hummel, quoted in Goodsell 1994, 103). This line of argument prefigures bureaucrats as non-human entities that lack the basic values or characteristics of the remainder of humanity, by virtue only of their occupation as public officials. Extensions of this argument tread into areas of profound contradiction, as the bureaucrat is “othered” to the point that his or her very characterization is meant to provoke a need in the reader to annihilate the bureaucratic class.⁷⁷

This argument, a part of the disposition of anti-bureaucracy, insists upon the rejection of bureaucracy because the existence of the institution itself violates basic principles assumed held by all. Understanding the institution of bureaucracy to be the institutional embodiment of rejection of values held in common by liberals and democrats (equality, parity, and individualism), the rejection of the bureaucrat as a diseased individual or one who is in a diseased state allows theorists in this disposition to

⁷⁷ I take great issue with the argument posited by Zygmunt Bauman (2001) that bureaucracy as institutions and individuals working in those institutions (bureaucrats) are naturally homicidal/ genocidal. I find Bauman’s argument to be a rather thin view of bureaucracy and a strange and uncomfortable paradox: the Nazi program undertook radical propaganda efforts aimed at dehumanizing the intended victims of “liquidation”, these same efforts (the same imagery and rhetoric) are what Bauman heaps upon bureaucracy. Rather than make a compelling argument that bureaucracy is a genocidal institution, Bauman makes well the argument that programs of dehumanization of any one class or category of individuals renders the elimination of that class or category all the easier. Although I take issue with this critique, I will not elaborate further on it.

reject the bureaucrat as a full, healthy contributing member of the society. The categorization of the bureaucrat and the bureaucratic condition as diseased offers an additional avenue for placing the bureaucracy outside of considerations of politics, thus rendering the task of theorizing politics in a liberal and/ or democratic mode much less problematic. Unfortunately, this exclusion also closes an important avenue for the realization of participatory democracy.

The final criticism of bureaucracy—that it is an inherently conservative institution disrupting the progression of the individual—is a criticism of bureaucracy leveled by those who would argue for a naturalistic view of human nature. In this view, human nature is inevitably progressing, whether through the reflexive generation of the liberal personality or the progression of competitive advantage via participation in an efficient capitalist system. Bureaucracy, by enforcing rules that prohibit exceptions for individual desires or individual advantage, seemingly contradicts this natural progress. That rules are inherently conservative of a preferred pattern of human behavior renders rules the mechanisms for the preservation of these behaviors, but the institutions that enforce rules are themselves not necessarily conservative.

In the sense that we can appreciate the conservative position, as does Oakeshott (1991, 407-438), bureaucratic enforcement of rules does present a conservative trend against the atomization and ethical relativism of liberalism taken to extreme. However, *contra* Oakeshott, bureaucracy does not itself prevent changes from occurring. While bureaucracy is an agent of social stability through its preservation of rules, it is not an agent of reversal. Far from this, and contrary to the anti-bureaucracy disposition, the

reversal of social processes and the slowing of inevitable progress is not an intended consequence of bureaucratic management in society, but is rather an unintended consequence of attempting to rule any organization of persons according to a fixed pattern of social preferences codified into law. The “inherent conservatism” of bureaucracy is little more than an historical accident of the role that the institution plays for society.

Anti-Bureaucracy and Legal Neutrality

The belief in the frequency and malfeasance of bureaucratic interference in politics emerges from the assertion, earlier articulated, that legislatures create law that does not require interpretation for its implementation and that any “interpretation” by bureaucrats is actually interference. Packed into the belief in legislative perfection is the notion that legislators construct law that is non-porous and value neutral. Again, the suggestion is that any interpretation by bureaucrats for the purpose of implementation is simply the injection of their individual values (which, recall are not part of the value schema held by ordinary citizens) and subsequently, bureaucratic domination over the citizenry for the sake of the aggrandizement of their maladjusted (diseased-state) values alone.

However, as structural-functional theorists and theorists of language demonstrate, there is no neutral language deployable in situations of organization, or social life in general (Foucault 1991, 1994). To evoke Foucault, power inheres in all language. Consequently, as law evolves in the accumulation of language, the notion of a

neutral law, of neutral procedures, is a falsehood from the beginning. This falsehood is not without its usefulness. Legal neutrality has been edified by scholars (procedural liberals) seeking to navigate around the necessity of authority, command, and a perfectionist tendency in government (Letwin 2005; Rohr 1978; Tyler 1994; Warren 1996). Specifically, the call for neutral procedures is a call for the elimination of all possibility of empowered authority in society.⁷⁸

Many variants of the dominant theories of liberalism, particularly those that elide theoretical liberalism with the practice of democracy, perform a covert evacuation of the law (procedure) in order to side step the true nature and definition of law as text *and* as practice that either restricts or promotes a particular type of social behavior. In virtually the universe of procedurally liberal theories, there is this inconsistency between the neutrality of law as statement or text and law as practice. This is, in part, what Habermas hopes to clarify in *Between Facts and Norms*. Habermas defines law as:

Modern enacted law, which claims to be legitimate in terms of its possible justification as well as binding in its interpretation and enforcement. Unlike post conventional morality, law does not just represent a type of cultural knowledge but constitutes at the same time an important core of institutional orders. Law is two things at once: a system of knowledge and a system of action. It is equally possible to understand law as text, composed of legal propositions and their interpretations, and to view it as an institution, that is, as a complex of normatively regulated action (1996, 79).

The mistaken interpretation of law as neutral with respect to implementation denies both the negative and positive aspects of law. In addition to neutralizing that which cannot be

⁷⁸ As Meyer (1978) makes clear, the tradition of liberalism in politics has led to the progressive decline of authority as legitimate due to (inadvertent) fusion of the concepts of authority and power. Authority has become the use of the individual power of the (elite) person in an authoritative position over the individual power another. The use of authority, even authority derived from law, some equate with the rejection of the liberal right to exceptionally self-determined individualism.

made neutral (lest law become mere “recommendation”), the quest to neutralize legal procedures to satisfy liberal needs for intolerant tolerance,⁷⁹ ignores the necessarily performative implementation of laws, and rejects the notion of a quality of law being possible. This expectation of procedural neutrality fundamentally ignores the true state of politics based upon law or procedure; that law requires implementation order to be.

To return to an earlier point, because bureaucrats are in a more differentiated situation than citizens in their relation to law and the exercise of legal power, liberal doctrines conventionally reject the unqualified full membership of bureaucrats in the liberal polity. As persons “closer” to the law, bureaucrats are able to exercise a greater measure of power over others if we measure the exercise of power here as the nuanced expert application or actualization of procedure through performance (Meyer 1975; Pennock and Chapman 1987). The dishonest power that bureaucrats have can be labeled bureau power. Bureau power arises as bureaucrats have more power vis-à-vis others because of their knowledge and subsequent application of this knowledge to the performance of the law. The inequality of expert knowledge founds a disparity of legal intimacy between citizens and bureaucrats. Particularly if we accept a notion of the nation as the practical embodiment of its constitution, then the inequality of the intimacy of bureaucrats with the law and constitution suggests an unequal intimacy of bureaucrats

⁷⁹ Intolerant tolerance is the tendency among theorists of liberalism to conflate tolerance for indifference. By becoming indifferent to the positions of others, the need for tolerance and liberalism becomes a moot point—if we do not have to take seriously the positions of others, then there is nothing to tolerate and there is negation of the whole reason for being of the liberal state. In this context, if we construct laws and procedures that only reify the intolerant tolerance position of liberalism, then the result is only despotism of apathy. In addition, the worst form of a tyranny of majority is not the implementation of a totalitarian or totally administered state as a result, but is actually the despotism that comes from the persistence of a desire for material comfort, micro-economic stability, and individual insularity that comes from despotism of apathy. I will address the issue of bureaucracy and toleration in a latter chapter in much more detail.

with the nation itself. The inequality of intimacy with the nation as law deeply contradicts the expectation of liberal doctrine that suggests that all members of the nation exercise equal sovereignty over and within the nation and that no one person can be greater or less than another with respect to the whole itself. Liberal doctrine finds no satisfaction with the disparity of intimacy with the law that naturally occurs in a complex constitutional society.

Though the constitutional moment is ostensibly a unifying moment among all persons, the moment fades into a diffusion of constitutional power according to a division of labor necessary to implement the constitution. After the constitutional moment, the differentiation of labor, and the differentiation of power result in the evolution of hierarchies, expertise and specializations, to which no persons will have equal unfettered access. An attendant concern is that not all persons are simultaneously, or even sequentially, able to hold power. The state of modern knowledge and capital producing divisions of labor suggests that not all persons can become part of the “empowered class”. Similarly, extending a concern of Rawls for equality of life circumstance and opportunity, not all persons can participate in the implementation of power given the situation of life outside of the veil of ignorance. Not all procedures can be performed by all equally in practice due to constraints of physical ability or differential intellectual aptitudes.

The tradition of anti-bureaucratic stances in liberalism assumes that those who are presently employed as bureaucrats are in an unnaturally, and unwarranted, if not out and out unjustly, superior position to those that are not. Those presently endowed by

occupational choice⁸⁰ with the power to actualize procedure are regarded as “outside” of the equalitarian structure of the true liberal society. Therefore, those in positions of power are therefore “other” or “alien” to the naturally equal order that would ensue from a truly autopoietic politics.⁸¹

On the converse side of the equation, bureaucrats are more constrained and less intimate with the nation than are “ordinary” citizens. The close proximity of the individual to the neutral apparatus of the state washes away bureaucrats natural right to participate in forms of political radicalism and the act of rebellion for the reformation of the society.⁸² While the proximity of bureaucrats to the law renders them powerful with respect to the power of the state over citizens, the same proximity alienates the bureaucrat from the post 1789 liberal right of revolution. That is, for the bureaucrat (and even the legislator), the act of revolutionary participation is not merely revolting against an order external to them, but is revolting against that which sustains them and that which they have created in a very intimate sense drawn into the performance of their

⁸⁰ The notion of a choice to public service and thus a choice to power squares only tenuously with liberalism in a superficial way—public servants have the individual and unfettered choice capacity to become what they are. However, this misunderstands some later variants of liberalism that recognize that life circumstances alter the choice situations of any individual and that therefore, the choice to public or private service may not be an actual “choice” in the most strict sense of the word. The literature on public personnel reveals a changing demographic of civil service positions from 1964 until present day, which includes more women and minorities entering the public sector. Trends on private employment compensation from this time indicates that public employment is a far less lucrative sector and that women and minorities may actually be entering the public service as a “choice of last resort” as the private sector has continued to favor traditional patterns of employment demographics.

⁸¹ Conservative critics of liberalism have dashed this belief in the romantic fiction of state of nature communism repeatedly and I will not elaborate extensively on this here, other than to reiterate that this romantic fiction is simply that, romantic and fiction.

⁸² Note the requirements of the Hatch Act that stipulate the degree and form of political participation those public employees may engage in.

very lives. In the context of bureaucrats and legislators, the act of revolution and of radical politics is not merely assault upon the state as it is an act of murder-suicide.⁸³

The explosion of the fiction of legal neutrality is necessary however, to the assertion of any type of bureaucratic legitimacy in the state. As Cooke makes plain,

[T]he constitutional state does not simply recognize the autonomy of citizens without regard to their substantive ethics commitments and convictions... constitutional principles and the legal system are inevitably interpreted in the light of some substantive conceptions of the good life. Habermas, we might say, no longer straightforwardly affirms the ethical neutrality of the constitutional state... (1997, 277).

As such, the continued reification of the neutrality imperative for administrative personnel means the persistence of an untenable fiction, necessarily replaced with a substantive view of “actual” politics and actual interpretive personnel (bureaucrats).

Thin Bureaucrats and Thick Citizens

The disposition of anti-bureaucracy is more than simply an indictment of the (in) capacities of bureaucrats within the formation and maintenance of the constitutional republic. It suggests an implicit theory of citizenship as well. The disposition of anti-bureaucracy includes within it what I take to be a remarkably thin view of bureaucrats (as both citizens and as persons in institutional roles), and a thick view of citizenship that involves assumptions of citizen duty that are more advanced than the ordinary practice of citizenship in most modern constitutional republics.⁸⁴

⁸³ Thus, following Walzer (1970) on obligation, the revolutionary bureaucrat commits an unforgivable act of irresponsible treason.

⁸⁴ For an assessment of the role of the individual in theories of citizenship see Portis 1986.

Citizenship, as with most essential concepts of political theory, has an extended history punctuated by particular “moments” (Carens 2000; Shklar 1991; Thompson 1970; Wolin 2004). Within citizenship theory, these moments can be divided into roughly two periods—the ancient republican, “duty bound” versus the modern liberal “emancipatory”—versions of citizenship. The ancient Greek conceptualization of citizenship requires that the citizen experience alternating modes of subservience and participation within the polity as an institution with a purposeful goal of the maintenance of the good life. This theory of citizenship called for the full participation in deliberations on the actions of the polity, but not determination of the good life itself. Alternatively, as elaborated by Plato, citizenship was, primarily, a subservient mode tying the good citizen’s function into obeying the commands of those who knew better in order to advance a more stable polity.⁸⁵ The later Roman conceptualization of citizenship married these two Greek traditions into a view that encouraged the promotion of a communal ethic and ethos of citizenship (as holistic end of the state) via individual participation in the enactment of law determined by a republican participatory mode. The Roman conceptualization of citizenship involved a more Aristotelian reflexive view of power that called for the citizen to both make and take the law as one among many.⁸⁶ The reflexivity of Roman citizenship was not voluntary as would be later versions of

⁸⁵ Plato’s notion of citizenship and that of Aristotle both had a reflexive tone: the best citizen could rule and be ruled in turn.

⁸⁶ Wolin’s summarization of Roman citizenship is helpful here: “In Cicero’s revealing definition ‘the peculiar mark of a free community’ consisted of the principle that it was illegal to violate the civic privileges or private property of an individual except by the decisions of the senate, the people, or an appropriate tribunal. Henceforth, the element of participation became of secondary importance, and the operative role of citizenship was to provide the only common status or meeting ground for men who were otherwise sharply distinguished by social, economic, religious, and cultural differences. What was political about citizenship was its role in overcoming heterogeneity, numbers and space” (2004, 83).

citizenship. Rather, Roman republican-- “thick”-- conceptualizations of citizenship were founded on the expression of citizenship as the manifestation of a person’s semi-volitional acceptance of certain duties.

This ancient republican tradition of citizenship has persisted through political theory as an ideal mode of citizenship, wherein members of the polity are motivated by an ethic and ethos of patriotism, obligation, duty, or common-purpose to participate in the activities of the state. In this conceptualization, the state and community takes priority over the individual. This thick notion of citizenship has particular purchase in communitarian circles as a form of citizenship based upon a set of common shared values. Charles Taylor, in particular, has advocated this thick citizenship as the ideal, most practicable, mode in the American constitutional republic.⁸⁷

The republican, thick notion of citizenship stands in opposition to a more liberal view that appreciates the practice of citizenship as the pursuit of one’s individual interests, with minimal attention paid to the appreciation of a universal interest held in common by all individuals. Following the late eighteenth century revolutionary period, the content of citizenship expectations shifted toward the liberal model and an individualized notion of citizenship and citizen rights. Rather than in a republican modality, in the liberal view the individual takes priority over the community. The formation of a citizen community, then, requires methods of calculation such as

⁸⁷ “Taylor finds a conception of citizenship that links together the communitarian’s holistic ontology and the liberal’s commitment to freedom. The political community, on this understanding is not simply an instrument for the advancement of individual interests. Rather, republican politics is organized around the idea of a common good, which can and ought to enter into the citizen’s conception of his own good. This fusion of individual and collective interests, which finds expression in the practice of civic virtue, is the political condition that makes liberty possible” (Hill 1993, 68).

aggregation and utility summation. As Haddock (2005) explains, the appreciation of a common ethics or “cult of virtue” steadily diminished in the later part of the century, exacerbated by the confrontation between the actualities of a large state apparatus and the ideal of a common purpose driven state.⁸⁸ The purpose of the state moved away from the promotion of a notion of good and towards the constraint of all vis-à-vis the others so that each individual could pursue liberty on their own terms. The consequence for this shift was the evolution of a permissive citizenship that made no explicit demands and held no obligation above the heads of the members of the polity.

These two moments of citizenship are in essential conflict with one another. As Cooper (1991) elaborates, this manifests itself in the evolution of citizenship theory within *The Federalist* debates. Likewise, Rohr (1986) alludes to conflict between modalities of citizenship that play a substantive role in the foundation of the Continental and American appreciation of the relationship of the citizen, the state, and the government apparatus. Elsewhere, the conflicts over competing models of citizenship play out as competing models of political theory.

The conflict between these citizenship goals has not been resolved in either political thought or political practice. Specifically, within the context of public administration, conflicts over the measures the state can enact for the objective of promoting a collective identity or ethos persist. As a feature of the disposition against

⁸⁸ “A cult of virtue, for example, of the kind associated with Robespierre or Saint-Just, might very well be a fitting reflection of the cultural homogeneity of an ancient republic. In a state the size of France in the nineteenth century, however, an insistence on moral or political uniformity would necessarily involve the suppression of a plethora of interests and points of view. Modern citizens prized individual liberty above all else. They were content for the political authorities to ‘confine themselves to being just’; they were perfectly prepared to ‘assume the responsibility of being happy’ for themselves” (Haddock 2005, 44).

bureaucracy, the liberal atomized notion of citizenship takes precedence as the ideal model for citizens who naturally adhere to common values independent of one another. Consequently, the efforts of bureaucracy to promote the values held in common (and democratically codified into policy and law) seen through the atomized liberal lens, interprets bureaucratic action to be an infraction against the individual-affirming rights granted to modern citizens.

This interpretation of bureaucratic interference has neglected the role of the bureaucrat as a citizen performing an obligatory duty on behalf of the state for the maintenance of the republic itself. That is, bureaucrats have become non-citizens as citizenship itself has lost its cultural and social value. Evoking the ontology of citizenship posited by Hill (1993), the problem of bureaucracy and citizenship is that while the citizen *qua* citizen has become an entity ontologically prior to the community, the citizen as bureaucrat is estimated to be either 1) outside of the community with no particular ontological standing within it at all or 2) an antithesis to the community and the standing that citizens themselves occupy.

The problem of reconciling citizens and bureaucrats, particularly within the context of the anti-bureaucracy disposition, is that because individuals are ontologically prior to a community (and therefore any communal good such as a holistic public interest) realization of communications within a state occurs only in a simplified relational mode.⁸⁹ As one person does not and cannot take precedence over another in liberal models of political thought, and because one's expectation and action of

⁸⁹ Thanks to Phil Gray for a long discussion of relational communication and liberal political thought.

citizenship is no better or worse than another's, and likewise, because no sovereign power (i.e., God or a "good" state) can rightfully intercede on moral or ethical grounds, all relations within the state, we presume to be best when they are "fought" as the war of one against another. This war of one versus all others is done only on the grounds the individuals themselves choose and any third party intercession—any bureaucratic interference—is the imposition of an alternative reasoning not agreed upon in a prior (contractual) situation. The disposition of anti-bureaucracy persists because the intercessory third party (bureaucracy) stymies the desire for all relations to be contractually determined prior to the act of relating. Again, in this model, the citizen who acts "thickly" acts based on his or her own set of calculations of the good, which only by the acts of the invisible hand are the same as another. The citizen who acts "thinly", then, acts upon a set of goods (which the dispositional anti-bureaucrat assumes s/he is only mimicking without interpretation) not reasonably argued in the negotiation of a contract. In this model, the bureaucrat is unreasonable as an ordinary citizen and therefore, out of the inter-relational system established.

Ultimately, the anti-bureaucratic disposition toward citizenship argues against the possibility of a state at all. That is, there can be no political community not predicated by a tenuous series of contractual positions. This argument collapses the state in on itself by promoting the idea of the good citizen as a self-aggrandizing, rent-seeking, utility maximizer unless she or he is in a position to act upon others. At the point where one citizen can act upon another, the possibility of being a good citizen in the previous model stops and the only possibility is that the bureaucrat who desires to be a good

citizen is the one who seeks to excise himself or herself from the bureaucratic situation and to return to his or her “natural” state as an atomized individual. The good citizen of this state will always be the one running from the state itself. For the anti-bureaucrats, acting “thickly” for the state is of a lesser order of good than is acting with a “thickly” individualist intention.

The disposition of anti-bureaucracy, despite its lack of any singular coherent center, occasionally bears the markings of an ideology when we juxtapose the disposition against the empirical reality it purports to explain. Hood (2005, 18) concisely comments, “Ideology is also often defined as a world view that is not readily ‘disprovable’ by facts and events, because after every apparent failure the true believers can argue that the problem (whatever it was) arose because their preferred approach was not applied vigorously enough, rather than it was tried and failed.” Often the ideological trappings of anti-bureaucracy emerge in the examination of particularly egregious cases of bureaucratic malfeasance (Adolph Eichmann (Arendt 1994; see also Benhabib 1988) and the Tuskegee Syphilis Experiment). However, these examples are but a small number of the routine “bureaucratic” acts that occur daily in any one nation, not to mention the universe of political events. The dispositional argument withers when confronted with the bare empirical evidence of bureaucratic humanity and the evidence that ordinary citizens are often pleased with their experience with bureaucracy (Peters 2001). The disposition of anti-bureaucracy, when confronted with the empirical

evidence presented by ordinary politics rationally selected,⁹⁰ either 1) becomes more ideological in its bases or 2) falls upon its own sword.

The Values of Citizens as Values of Bureaucrats

As alluded to above, a basic tendency of the anti-bureaucratic disposition is to believe that bureaucrats hold values inimical to those of the “ordinary” citizen. Of course, the values of citizens are difficult to quantify and even more difficult to identify in relation to a stable lasting set of values held in common by all. In fact, it is difficult to define the notion of a value held and the ideological tenets subscribed, in any meaningful way.

Defining values requires defining the identities of the citizens of the nation. In a highly pluralistic liberal society, this task of definition is quite problematic. As citizens themselves differentiate, so do their values. As Mooney summarizes well,

the core values that stimulate morality policy debate are rooted deeply in a person’s belief system, determining how he or she defines himself or herself and his or her place in society. These are the values of primary identity: race, gender, sexuality, and especially religion, which is for many people the basis of their most fundamental values. Unlike more secondary identities, such as class and socioeconomic status, most people never even hope to change these primary identities, even in the socially mobile, optimistic US culture (Mooney 2001, 4).

These primary identity markers shape the values of all citizens, and become an intrinsic part of the political environment in which bureaucrats play an integral part as both

⁹⁰ I say rationally selected here for a specific purpose, the language of the anti-bureaucracy disposition, despite its cast (in recent literature in particular) of neutral or scientific rationality, is often highly emotive and intended to provoke an emotional response and rejection from the reader. The tendency towards promotion of an emotionally charged (and linguistically simplistic) analysis is a trapping of an ideological project rather than a scientific or “rational” one.

observers and citizens themselves.

The identities of bureaucrats are, as Mooney (2001) and Golden (2000) allude to, multiple and characterized by primary and secondary factors. Within their context as citizens alone, bureaucratic values follow the same primary and secondary value structures as could be expected of citizens. Within their context as bureaucratic officials, the line between an individual's primary and secondary values blurs. Moreover, within the literature on bureaucratic "neutral competence" the line between primary and secondary, citizen and bureaucratic values evaporates.

An attendant problem of defining bureaucrat versus citizen values arises when we try to capture the notion of bureaucratic values as embedded in the legal context in which they serve professionally and the "moral" and symbolic context in which citizens live their lives. The reconciliation between the legal and moral context of government has been the subject of extended treatises on politics and is a central concern of the project of political and administrative theory as a whole. This reconciliation has been performed through two modes. The first one (which I call the Habermasian) constructs an ideal-typical situation of the political in which the two can be reconciled through the avenue of creating the communicative situation of politics in an ideal form. The other (which I call the Oakeshottian) takes a more experiential approach that attempts, not to reconcile the two, but to explain them as distinct parts of the experience of political life altogether.

The Habermasian mode of moral-legal union hinges upon the proper performance of communicative action according to discourse ethics. To simplify the

argument here, the performance of intersubjective communicative action results from two social streams crossing. The first is the creation of a lifeworld-based constitutional order in which the laws and norms of the state are continually reinforced through communication; and the second is the creation of a lifeworld-affirming moral consciousness (and order) in which the mores of the community is continually reinforced through the implicit norms of discourse ethics. Since each of these streams hinge on the communicative situation, both morality and legality can be reconciled through reversion to the communicative situation and the performance of communicative action with an aim towards reifying both the moral and the legal elements of the lifeworld shared in common. This ideal-typical construction is helpful in the project of reconciling bureaucrats and citizens as symmetrical forms through the realization of both as intersubjective participants in the communicative action situation. The foundations of the goals/ values/ morals of bureaucrats are the same as the goals/ values/ morals of citizens because they arise from the same communicative substrate.

Oakeshott does not attempt a project of moral-legal reconciliation as such. In fact, he does not admit the possibility of a moral legal reconciliation because the two are fundamentally different states of political being in the modern state.⁹¹ To quote directly from Oakeshott (1993, 16-17):

An absolute coincidence between conduct believed to be morally wrong and conduct which is prohibited by law is not to be expected anywhere; still less is it to be expected that there will be an absolute coincidence between conduct believed to be right and conduct enjoined by law. Even where, as may be the

⁹¹ He does suggest that morality and legality can unite, courtesy of fanatics (in Calvinist Geneva, for example) in a theocracy, but his implicit assertion in the passages on theocracy is that it is neither modern, nor a state.

case, there is no discord between what is enjoined or prohibited by law and what is believed to be right and wrong in human conduct, it is almost impossible for the moral beliefs of a community to be reflected in their entirety in its laws. Law and morals normally have the same centre [sic] but not the same circumference. This absence of coincidence between law and morals may in some circumstances be small, as in the case of a theocracy whose law is itself a religious law and where every crime is recognized as a sin and every sin is proscribed as a crime, or the divergence may be considerable, as in the case of an association whose members subscribe to a variety of religious and moral beliefs and yet live under one law.

Taking the Oakeshottian perspective on the problem, the values of bureaucrats are reflexive of the context citizen values, but only incompletely so. As the citizen's values themselves can never fully (as in the full expression of values at this time) be expressed in law, bureaucratic values can only be a reflection of the citizen values that were. This makes the values of bureaucrats inherently conservative in themselves, but not necessarily inimical to the values of citizens at the present juncture. The project of reconciling bureaucratic and citizen values becomes, then, not a project of asking bureaucrats to realize citizen values perfectly, but rather a project of asking the sovereign citizens to recognize their values completely themselves (and subsequently the request from legislatures that these recognized citizen values be codified quickly and completely). The analogy of reconciling bureaucratic values and citizen values from the Oakeshottian perspective is tantamount to asking the mirror to reconcile with its opposite completely, despite its own form as a two dimensional space attempting to capture three dimensions.

Returning to the point alluded to above, within a more Oakeshottian framework, the values of citizens and the values of bureaucrats can be reconciled through reference to their preferences for particular political and social states of being. The reconciliation

of bureaucratic and citizen values, following the Oakeshottian model, is best done when bureaucratic values are realized to be an imperfect mirror of citizen values, which are constrained by differing (but not inimical or external) forces. The recognition of the imperfect symmetry between citizen and bureaucratic values requires, however that the emotive and ideologically charged language of the anti-bureaucracy disposition be abandoned to the possibility of experience empirical validation.

Bureaucrats as Citizen Peers

Cooper (1991), in reviewing the historical tradition of citizenship in America, points out that the progression towards a more individualistic society following the American founding has resulted in a divorce of the notion of citizenship from the idea of citizenship as common-good promotion via public service. This, as discussed above, he figures as part of the tradition of liberal atomized citizenship. In his words,

Although in the liberal tradition private citizens have no official roles and are left to pursue their own particular interests, there is another stream of thought which counters the limitations of this perspective. Meiklejohn suggested that ‘we are, in fact, legislators and judges ultimately of the exercise of power wherever it occurs. In this we are, to paraphrase Jefferson, all public agents, just as we are all private individuals, too’. The responsibility of the citizen is not that of a participant in the market—engaging in a competitive struggle for maximum personal political benefits—but rather the responsibility of occupying a public office. Citizenship as the public office of the individual member of the polity carries with it an obligation to consider the well-being of the polity as a whole (Cooper 1991, 138).

While thus far I have emphasized that bureaucrats are, in fact, citizens, in this section, I argue that citizens, in turn, are bureaucrats.

The notion of citizen-sovereignty in government suggests that citizens have a legitimate claim to direct the conduct of the state itself. These claims necessitate that citizens can constrain their legislators and (per the statements above) constrain the actors of the executive. Nevertheless, embedded in the notion of citizen-sovereignty is the idea that the citizen has a dominant place within the actualization of the state itself. Whether the Habermasian or Oakshottian perspective is adhered to, citizens and their values have a place in the expression of the state that is equal to the state itself. As the *ab origio* creators of the state (following sovereignty and Habermas, in particular), the citizens can occupy any office of the state without theoretical limit.⁹²

Via the Habermasian construct, citizens have infinite opportunities for interaction with the state itself through the performance of communication. Likewise, bureaucrats have virtually limitless opportunities for interaction through communicative performance. That interpenetration of the citizen's sovereignty into the structures of the state influences the degree to which citizens, bureaucrats are conversant, and communicatively acting, the potential for citizen equality with bureaucrats becomes real. Through the combination of models of citizen sovereignty and the authorization/legitimation of the state through intersubjective communicative action, the potential for equality between citizen-sovereign and bureaucrat in the hierarchy of the state is possible. What are we to make of citizen-bureaucrat equality defined by the law?

⁹² Practically, this is of course limited, as the public occupation of Nuclear Physicist in the Nuclear Regulatory Commission requires some knowledge of nuclear physics for competence. However, the limitations on who can take the opportunity to train to become a nuclear physicist are not legislated.

An intriguing problem of reconciling bureaucrats as citizens is that bureaucrats, as has been argued above, have greater levels of access to knowledge about the projects of the state. By virtue of this information, they have particular constraints beyond those of citizens. However, the information possessed by bureaucrats also renders them useful as citizen interlocutors in a communicative public sphere. Bureaucrats, by virtue of their intimacy and proximity to the law, bring additional value—in the form of language, primarily—to the communicative situation that is value additive to the formation of the lifeworld held in common by discoursing citizens.

Bureaucrats as Public Sphere Participants

To bring bureaucrats into the public sphere requires expansion of the content of its membership in two ways. First, it requires a reworking of the idea of the bureaucrat as a peer regardless of status or knowledge disparities. Second, it requires a reworking of the idea of the average public sphere discussant as someone endowed always already with the potential to be actualized into the procedural creation of the state. In short, we must make bureaucrats ordinary citizens and ordinary citizens potential bureaucrats.

The importance of recasting the bureaucrat as citizen is more than just the project of reconciling empirical reality, survey results and the performance of a *sed contra* to the disposition of anti-bureaucracy. The importance of reconciliation ties into the project of legitimating the state as a whole. The slight of hand performed by adherents to the anti-bureaucracy disposition to eliminate a full 10% (or more) of a nation's population from

the privileges of citizenship serves, contrary to their arguments that the elimination of bureaucracy leads to democratic legitimacy, to *de*-legitimate the state.

Specifically, the removal of the bureaucrat eliminates a significant number of minorities, non-elite class participants, and women from the process of public interest formation. In addition, the elimination of the bureaucrat effectively silences the voice of those whose access points to democratic participation depends upon their interaction with bureaucracy.⁹³ Although I address the recognition and communicative/facilitative function of bureaucrats later, I address the necessity of bureaucrats for the formation of the fully public interest here.

According to the argument laid out above, bureaucrats themselves are (simply) citizens employed in a vocation of service to the state.⁹⁴ They are motivated to uphold the values of the state as their own but are also motivated towards the protection and progress (holistically) of the state which they serve. Specifically, the ideal bureaucrat seeks to uphold constitutional values (and their own constitutional oath), values of the constitutional community of citizens, and rights as values endowed upon all citizens. That is, bureaucrats seek to maximize the public interest and to perform as administrative conservators; they seek to uphold the values of the constitution itself.

The discursive project of public interest formation suggests that all persons must come together as equals to debate the matter of determining what is in the interests of all involved. This project is essentially equalitarian in inputs and expected outputs.

⁹³ See note 59 for an example.

⁹⁴ I use the term vocation here to indicate the taking of a professional capacity that affects the entirety of that person's life. Other persons (who may also be bureaucrats) who practice a vocation are physicians, police officers, and some clergy.

However, the role of the bureaucrat is to serve as an equal partner to the conversation and to bring the benefit of information and power proximity to the discussion. The inclusion of those with “more” information or power proximity seemingly contradicts the objective or ideal situation of discourse as egalitarian peer communication.

However, to say so requires the imputation of two inaccurate assumptions. The first is that knowledge directly equals power (*pace* Foucault) and the second is that pure equality (in all arenas) is the only situation where discourse ethics and communicative action emerge fully.

The belief that knowledge differences are translatable directly into power differences collapses in those situations where individuals willfully commit to a framework of communicative action and resign their atomistic desires for individual gain and strategic action. The argument made for the equation of knowledge as power also supposes that power is a coercive force only, and that in situations where knowledge equals power, knowledge is always coercive. The fundamental argument in this line of thought is that human relations and government in particular, is the extension of blackmail by any means. But what communicatively acting individuals—those that can be rightfully called part of the legitimate public interest forming community—have surrendered prior to even becoming communicatively competent (according to universal validation criteria) is the desire to commit blackmail. The assumption that all politics and all interest formation processes are competitions between warring groups for the rights to blackmail (interest group theory), is a dreadfully Hobbesian sort of argument that borders on ideological *real politick*. Just as we know that all bureaucrats are human,

we also know that humans are not a being exclusively motivated to blackmail. Therefore, if bureaucrats can be described as citizens, and citizens as potential bureaucrats they (citizens as/and bureaucrats) can be motivated to use their knowledge/power to ends more democratically facilitative and other-regarding than coercion and blackmail.

The second assumption that inhibits the acceptance of bureaucrats as participants in public sphere interest formation is that all discussants in the deliberative/ discursive situation must be equals on all grounds (relevant or not). This is not expressly a requirement of the pure Habermasian discourse ethics, but rather comes from the misapplication of the Rawlsian criteria of justice to the understanding of deliberative/ discursive theories broadly. Fortunately, Rawls himself (and some later discourse theorists, see James 2004) recognize the untenable nature of complete equality and offer an interpretation that equality of intent, combined with generally equality of position in the discourse, provides a suitable backdrop for discursive participation.

Rawls (or the later version of Rawls, anyway) reformulates the principle of justice as fairness to allow for a more nuanced view of the liberal person as one with many identities. Consequently, he amplifies the insistence that all can have their individual attributes and benefits so long as the exercise of one particular persons' benefits do not infringe upon (by either right or power) the life chances of another. In this, he allows that one person's handicap or another's advantage does not make them any less a discursive liberal participant, so long as they respect that they cannot act with the strategic aim of advantage over one another. The consequence to bureaucrats is that,

providing that they (along with ordinary citizens) do not act upon their advantage of knowledge, station, proximity to the law, or other potentially coercive strengths they can be legitimate discursive, justly acting, communicative participants in the public sphere formation process.

Granting, of course, that these are ideal standards, what bureaucrats bring to the discursive table is the information (vocabulary, facts) that lay outside of the shared lifeworld between citizens. The bureaucrat, then, acting with his or her unique reflexive symmetry as both citizen and bureaucrat, brings the ability to frame, using skills of communicatively competent performance, the project of the state in multiple, individually specific, and community-affirming ways. Bureaucrats as citizens facilitate the production of discourses of legitimacy by providing discursively valid and useful knowledge, as well as solutions, to the public interest formation process.

The place of the bureaucrat in the public interest is, then, more problematic than originally we might have thought. That is, bureaucrats are engaged in the project of both making and taking the public interest standard (Jones, Greenberg, Kaufman and Drew 1977; Fischer 2005; Forester 1999). While this may seem initially to be more problematic than promising, if we look at the process of public interest formation, codification, and expression, we find that their dual pronged participation is actually an additional “safety valve” against legislative despotism or the tyranny of the majority. The realization that bureaucrats are discursive public sphere participants makes the necessary practice of bureaucratic interpretation less frightening, and perhaps good, considering the reality of legislative politics and policymaking.

CHAPTER V

COMMUNICATIVE ACTION AND THE PRODUCTION OF LEGITIMACY

If administrative legitimacy is to be the measure of good government, as I argue throughout it is, then the task of the administrative theorist is to posit ways to achieve legitimacy for both bureaucracy as democratic institution and democracy as a whole. In the context of addressing the legitimation questions in public administration, an ideal-typical approach will necessarily be two-pronged—procedural and substantive. Here I will focus on the development of an ideal typical procedure for addressing legitimation questions in the context of administrative practice.

The institutions of public administration are communicative institutions embedded in the project of maintaining the democratic state as such. We can think of the importance of deliberation and communicative action to public administration in two interconnected but conceptually distinct ways. Communication in a democracy requires procedural conditions for the development of substantively defensible results. My work thus far has been focused on the substantive purpose—the formation of the public interest-- of discourse between citizens and the bureaucracy. However, in this chapter, I focus more on the procedural conditions necessary for achievement of citizen-bureaucratic discourse. Specifically, I ask here, what are the necessary conditions of bureaucrat/ citizen discourse in a communicative context? In addition, can this provide

an adequate normative defense of the practice of bureaucrat/ citizen deliberation as a “good” in a political system challenged by issues of illegitimacy?

The communicative power indwelling in the letter and spirit of the law catalyzes the communicative practice of administration. That power always already present in the constitutional state as part of the system and lifeworld, when captured at the administrative level, brings politics to the level accessible for the citizenry in a communicative form. We find administrative power at the seam of the system and lifeworld; it is where communication in the modern welfare state occurs.

Full accessibility of communicative channels for all is an initial substantive and procedural requirement for the communicative legitimation of the state. As many citizens have limited accessibility to the fullness of legislative channels, in order to facilitate the project of legitimation, we must re-think communication at the more accessible level of public administration. To do so requires reconsidering the theory of communicative legitimation of the constitution, as Habermas originally proposes. Specifically, it requires rethinking the concept of community vis-à-vis the role of the constitution and the perception of legitimacy to begin with.

The procedures initially supposed in Habermas’ theory of communicative action are constructed at the level of societal and legislature-citizen interaction. However, these hold for this theory of communicative action occurring at the level of administrator-citizen interaction. It is not merely a “down shifting” of levels of analysis or conversation that is required here. Rather, there are additional conditions placed upon the conduct of validating communicative action at the citizen-bureaucrat level.

To invoke Habermas directly, “To the extent that the law should normatively be a source of legitimation and not just a medium for the exercise of political authority, administrative power must remain bound to communicatively generated power” (1996, 188). Though this presupposes the existence of some always already present law that represents the communicatively generated power of a prior time, I argue that we must focus on the transmission, and transfiguration of law into enforceable rules as the key for founding a perception of legitimacy at the level of citizen engagement. The task is not to remake the constitution but to ground those rules in communicative power as the legitimate validating foundation of the constitution as norm-generating instrument, itself.

This task—the achievement of communicative legitimation of state action—is outside of the purview of expected actions on the part of public administrators operating in an instrumentally rational environment. Communicative action has the intended purpose of achieving a synthesis of citizen-administrator beliefs about a regulative action’s legitimate foundation by forging a common understanding on the normative dimensions upon which legitimacy rests: truthfulness, sincerity, and rightness. The product (to the extent it can be called such) of communicative action is that all partners to the situation will understand similarly the normative basis of an action sanctioned by the law, and importantly, will voluntarily comply with the law itself. The achievement of communicative action is costly. It is decidedly more costly than persuading another actor to act based solely on compulsion, threat, and external reward, or on other instrumentally rational grounds. A synthesis of normative beliefs based on the

deployment of communicative rationality entails a genuine convergence on a set of beliefs about the legitimate bases of the values of a rule or law.

For public administrators, the facilitation of a truly communicative situation is more costly than merely compelling through force (economic, physical, and emotional) the compliance of citizen clients. The costliness of communicative action arises from the conditions of the administrative environment, primarily its instrumentally rational orientation. Public administrators step in, and expectedly behave in such a way that reinforces a strategically or instrumentally rational position. Consequently, by virtue of the rationality guiding public administration to begin with, they are constrained in their ability to engage in non-instrumentally rational action.⁹⁵ These constraints, which come from both administrators' principals and their clients themselves, inhibit public administrators' range of deliberative options. In addition, these constraints also force public administrators to operate in dual modes of rationality, which in practice appear to be incommensurable at first glance.

⁹⁵ Here a brief example may suffice: according to rules of the Veteran's Administration Hospitals, ancillary care specialists (Physical Therapists, Speech Therapists, Respiratory Care Specialists, and so on) are required to report billable hours to the facility based upon an expected range of professional services offered. While there are categories such as "patient education", "family education", "patient development", and "other", there is not a billable category for "communication" or "explaining hospital policies." Nonetheless, these specialists are 1) bureaucrats of a sort, 2) engage actively with patients (citizens), and 3) are often involved in elaborating on policies. That they must report billable hours using a highly rationalized system of rigid service categories inhibits them from engaging communicatively (read: with little other distraction than the task of discourse at hand) with patients on professional time.

Communicative Action, Procedure, and Consensus

The question that asked of scholars suggesting a communicative approach is whether the groundwork or rules of argumentation in communicative action forge a stronger consensus between parties, particularly those parties with differing and divergent viewpoints. As suggested above, the themes of the matter follow according to three broad world categories—objective, subjective and social—deliberated upon according to four antecedent rules—rationality, expressive efficiency, mutuality and the orientation towards understanding. These conditions precede communicative action and, in part, precede consensus building.

Consensus and consensus building are popular terms in contemporary political and public administrative scholarship. Deriving weight from the turn towards more deliberative, discursive, or broadly participatory theories of democracy, consensus, and the arrival at consensus has a new and mounting normative weight. Specifically, law, policy, or rule suggested to be “consensus based” lends that statement commendatory validity. Encapsulated in the description “consensus based” is the expectation that particular democratic procedures encompass individual ontological equality, equality of voice, transparency, communally accessible forms of knowledge and epistemology, and equalitarian procedures for decision-making. The commendatory weight of the term consensus based means that shared understandings and mutually acceptable procedures form the basis of the decision and that there is a shared understanding and mutual acceptance of the outcome of the decision.

Consensus in Habermas' definition is a "shared interpretation of the situation" where "...a situation denotes a segment of a lifeworld that has been delimited in terms of a specific theme. A theme arises in connection with the interests and objectives of actors. It defines the range of matters that are relevant and can be thematically focused on" (2001, 134-5). Decomposed etymologically, consensus is the "sensation with" shared among groups of subjects—consensus requires the sharing of interpretations (through our senses, one of which is the sensation of legitimacy) with others. Predicating arrival at such a shared sensory interpretation, known often as consensus building, is the idea of an orientation of participating individuals towards understanding. Individuals will engage in the process of determining those worldviews that are necessary for them to reach an understanding on a particular issue. They will also exchange those explanations of orientations required for the development of an understanding deep enough to legitimate both the process and the substantive conclusion.

Communicative action oriented towards understanding can encompass the task of making understood those bases for the appeal to a consensus, but can also provide the groundwork for the consensus building exercise itself. It may be part of the consensus building process, but it is not a precondition for it. Consensus building, and the establishment of a decision commendable for its adherence to legitimate process and consequent substance, is but a practical part of the full process of legitimation under conditions of communicative action. Subsequently, we should think of the consensus

building process as part of a larger communicative action process of legitimating the regime in the broader sense.

Decomposing the idea of communicative action, and more broadly the legitimation of government, into rigid procedures would do a serious injustice to the fullness of the concept itself. Nevertheless, it is possible to describe the communicative action process within the framework of a procedure useful for the instrumentally rational context of public administration. Though there may be alternative ways to demonstrate this, here I attempt to do so by summarizing communicative action as a rational process.⁹⁶

Understanding Communicative Action

In general, communicative action is the purposeful exchange of speech-acts, or statements of both illocutionary and performative force, between peers in a given situation, with the goal of attaining mutual understanding of the material and normative conditions for conjoint action. I will develop the following major points from this general guiding definition to elaborate on the components of communicative action to consider when discussing the communicative engagement on the part of public administrators. To explicate a procedure for citizen-administrator communication, we must hold the following standards and objectives constant throughout—an appreciation for 1) rationality, 2) expressive efficiency, 3) mutuality, 4) and orientation towards

⁹⁶ Here I am following in the footsteps set by Knight and Johnson (1996, 1998) and Bohman (1998).

understanding. These criteria, though broad, suggest limitations to communication that serve as procedural guidance for public administration.

Regarding Rationality

Habermas, like other thinkers in the modern tradition of political theory, makes much of rationality throughout his works, ranging from his theory of communicative action through his further theorization of society. Indeed, the debate continues in the secondary literature on the central importance of rationality in Habermas' theory of society and communicative action.⁹⁷

Although much debate persists over the validity of the rationality assumption for communicative action as social theory, the basic premises of Habermasian rationality are imperative for the incorporation of communicative procedures in the context of public administration. To elaborate: irrespective of the rationality orientation of public administrative activity-- whether it is instrumental as is posited in the historical, positivist, and managerially literature on public administration, or constitutive as posited in the post-positivist, critical literature-- rationality as purposefully connected thought and action is a basic tenet of administration.⁹⁸ The rationality assumptions of public administration demand an organization of speech and thoughts defensible according to standards such as efficiency, equity, cost, or benefit, in order to provide a defensible

⁹⁷ See for example, the articles in Calhoun (1992), Bohman and Rehg (1997), White (1995) and see also Heath (2001).

⁹⁸ For an analysis of the typologies of rationality, their uses and abuses in public administration, see Cook (1996).

basis for action according to rationality standards.⁹⁹ According to the rationality assumption of public administration, speech (rules) and action (patterns of enforcement) follow one another in a logical causal way. This style of rationality is largely non-controversial as an idea, though the application of rationality is sometimes not.

A similar belief in the connection between thought and action guides

Habermasian rationality in the context of communicative action:

In contexts of communicative action, we call someone rational not only if he is able to put forward an assertion, and when criticized, to provide grounds for it by pointing to appropriate evidence, but also if he is following an established norm and is able, when criticized to justify his action by explicating the given situation in light of legitimate expectations. We even call someone rational if he makes known a desire or an intention, expresses a feeling or mood, shares a secret or confesses a deed, etc., and is then able to reassure critics in regard to the revealed experience by drawing practical consequences from it and behaving consistently thereafter (1981, 15).

Habermas reiterates and somewhat clarifies the connection of norm guided thought and action for communicative rationality more clearly later in 1984,

... The conditions of rationality can be explained in terms of the conditions for a communicatively achieved, reasonable consensus. Linguistic communication that aims at mutual understanding—and not merely at reciprocal influence—satisfied the presuppositions for rational utterances or for the rationality of speaking and acting subjects. ... the rationality inherent in speech can become empirically effective to the extent that communicative acts take over the steering of social interactions and fulfill functions of social reproduction, of maintaining social lifeworlds. The rationality potential in action oriented to mutual understanding can be released and translated into the rationalization of the lifeworlds of social groups to the extent that language fulfills functions of reaching understanding, coordinating actions and socializing individuals; it

⁹⁹ Stone (1997) elaborates on the connection between these ideas and the goals of public policy administration at some length.

thereby becomes a medium through which cultural reproduction, social integration, and socialization take place (1984, 86).

In the context of social interaction, of which public administration is certainly a part, rationality is the hinge between thought and action. Habermas proposes that rational thought is an internal dialogue that follows the patterns of argumentation held between two subjects. The act of mutual reason giving allows such internal subjects to weigh decisions and to act on one or another rationally. Embedded in the reason-giving task of thought in action is the norm of rationality. The explicability of action is what renders it, ultimately, rational.

This explicative requirement of rationality persists in the thought of Dewey also.

Specifically, as he comments in *Democracy and Education*,

Reason is just the ability to bring the subject matter of prior experience to bear to perceive the significance of the subject matter of a new experience. A person is reasonable in the degree in which he is habitually open to seeing an event which immediately strikes his senses not as an isolated thing but in its connection with the common experience of mankind (1961, 400).

That we can connect our sensation of the world with the experiences of life (of which thought is certainly a critical part) that we have singularly and in common suggests that we can be, in Dewey's sense rational. That we can explicate this in understandable forms to our fellows in common, suggests that we can be communicatively rational in Habermas' sense.

In terms of procedures in the administrative situation, the expectation of rationality mandates that specified, communicatively understood, rules guide actions.

For public administrators, particularly line or street-level administrators, the rationality requirement requires that they can defend the application of rules. Rules to defend include those that are either quite specific, such as standards of admissibility to Medicare, or a more vague or contestable standards such as, the determination of mental retardation on the basis of IQ tests and/or tests of skill competencies according to a battery of documentary evidence coming from national, state, or local law and policy. They must be able to defend communicatively through reason giving, an action based upon the presence of documents that themselves are artifacts of previous communicative actions. As a procedural constraint, public administrators at this level should be able to defend their actions based on pre-determined acts of speech (i.e., law) that apply specifically to the policies. The rationality requirements of communicative public administration demand that speech (the policy itself and the original legitimating documents of the policy) support actions (execution of policy). In addition to communicative competencies, the rationality requirement mandates (in line with Weber's original dictum) the continuous presence of documentary evidence of decisions and prior actions as explanatory support for action.¹⁰⁰

Rationality as Exchange

Rationality as a basic assumption entails further development, as there are a number of different types and typologies of rationality proposed in recent political and

¹⁰⁰ Max Weber, *On Bureaucracy*, specifically in the section Characteristics of Bureaucracy, points III and I. See Weber (1997) pages 37-38.

administrative thought.¹⁰¹ As theorists from Stone (1997) to Shapiro and Green (1994) and Shapiro (2005) have made clear, the economic type of rationality has grown to dominate much of political and administrative thought. Therefore, to attend fully to the rationality of communicative action in politics and administration, we must attend to the economic rationality assumptions within it.

The procedure and procedural language used to develop an understanding of communicative procedure is similar to that used to describe market-based transactions. Consequently, when discussing communicative action, similar terminology may be used. In the description of market exchange relations, the terms “buyer” and “seller” obtain to depict particular player characteristics understood to be basic conditions of market transaction. In the description of communicative exchange, the terms “speaker” and “listener” obtain to depict particular player characteristics understood to be basic conditions of the transaction. We can regard the speaker as the seller and the listener as the buyer in most incidences, but with an important qualification. In the communicative action situation, players can and must switch communicative roles—speaker becomes listener—in order to facilitate the use of communicative rationality. In other words, there is a dialogical mutuality requirement to the acceptance of either role and both players must be willing, as a basic component of the communicative rationality assumption, to accept the role of the other as necessary to facilitation of understanding.

¹⁰¹ The exploration of rationality, the types, and implications of rationality are all major components of political theory today. As such, a complete catalog would be prohibitive. Nevertheless, some interesting works that have shaped thoughts in this work include Farmer (1995), Shapiro and Green (1994) and Shapiro (2005), Stone (1997), and Wolin (2004).

The standard of mutuality suggests that both parties recognize that they are “in this together” and that neither can completely exit from the system (lest they were to commit a final exclusionary act such as suicide or radical separation from the original society).¹⁰² Habermas posits that mutuality is always already a condition of much of the communication that occurs in the context of modern constitutional democracies. That is, the legitimacy conversations in the state are n-player games from which no one player can fully exit (barring conditions already listed which would be non-rational in the main), but any player can be more or less involved with at a given time or in a given situation. Specifically, most parties will have been reared in the same environment, predisposing them to common experience, common language (to the extent that language includes symbols, gestures as well as vocabulary and grammar), and common appreciation for the ontological value of one vis-à-vis the other.¹⁰³ This mutuality of

¹⁰² Michael Walzer in *Obligations* (1970) makes the point that suicide is an ultimate act of denying ones political responsibilities and is, I think it could be extrapolated here, an act of radical exit.

¹⁰³ These Habermasian assumptions of mutuality are also present strongly in Dewey’s estimation of conjoint action in a political society. As relates to the mutuality of communication for democracy, Dewey has this point (among others that are a variation on this essential theme) to say: “... the realization of a form of social life in which interests are mutually interpenetrating, and where progress, or readjustment, is an important consideration, makes a democratic community more interested than other communities have cause to be in deliberate and systematic education. The devotion of democracy to education is a similar fact. ... Since a democratic society repudiates the principle of external authority, it must find a substitute in voluntary disposition and interest; these can be created only by education. ... A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience. The extension in space of the number of individuals who participate in an interest so that each has to refer to his own action to that of others, and to consider the action of others to give point and direction to his own, is equivalent to the breaking down of those barriers of class, race and national territory which kept men from perceiving the full import of their activity. These more numerous and more varied points of contact denote a greater diversity of stimuli to which an individual has to respond; the consequently put a premium on variation in his action. The secure a liberation of powers which remain suppressed as long as the incitations to action are partial, as they must be in a group which in its exclusiveness shuts out many interests” (*Democracy and Education* 1924, 100-101). Both Dewey and Habermas explicitly connect the establishment of genuine connections between members of the demos, through communication, with the maintenance of the ideal democracy. Additionally, as will be elaborated upon later, both connect the development of mutual communication with the project of defining the common interest and legitimating the actions of the state according to this standard.

experience forms the basis of the lifeworld or resources of background knowledge held in common.

As individual persons possess some access to knowledge of the common through the medium of shared experiences, they are able to make assertions of fact about the world they hold in common (e.g., we live in this space populated by you, others, and me simultaneously). This ability to offer statements pertinent to the lifeworld allows each to exchange easily those meanings, symbols, and vocabulary foundational for deliberation. The established presence of some level of shared lifeworld allows for deliberation between persons of differing world-views (e.g. religious backgrounds) even before each is willing to commit to the task of openly communicating. The discursive exchange of normative reasons for action allow the speakers to come to an agreement on acceptable grounds for legitimating actions each may take on behalf of the other or the community at large, even if the action taken does not satisfy either speakers highest instrumental desires.

To the extent that each member of the society appreciates the symbols and meanings of the other (to appreciate the common in their common sense), then they can realize a mutual state of being (Kaufman-Osborne 1984, 1148; Habermas 1984, 22). To elaborate, both public administrators and citizens must appreciate that each may have differing ways of expressing the same fact, term, concept, or need. To the extent that a symbol or an act has consistent causes and consequences expressed in a meaning, each determines symmetrically, the players communicate as mutual, rational partners in communicative exchange mediated by appeal to the common sense of each.

Communicative action, though not instrumentally rational in the strictest and most economically precise sense, does involve exchange as typically understood in analyses of market transactions. Communicative action entails bargaining and the trade of “linguistic commodities.” In the market, players trade goods and services directly or indirectly with one another, intending to achieve the satisfaction of their needs or wants. Here an implicit recourse to contracts binds players to exchange with one another according to implicit rules of transaction such as the utilization of currency, bills of sale, and returns of merchandise and so on. The contractual terms that players agree to in market transaction include: 1) sanction and punishment for non-compliance with explicit and implicit terms and 2) an expectation of continued transaction. Ordinary market transactions, while often conceived of as “one-shot” forms of non-normative interaction, are in practice iterative and the normative-contractual terms of the market stipulate that reputational benefits of recurring transaction have bearing upon subsequent transactions. Therefore, there is an additional criterion: 3) no player will undermine the system because stable market-transactions are critical for the attainment of each player’s understanding of the “good life.”¹⁰⁴

In the communicative market place, as in the economic market place, statements exchanged have written into their grammar particular contractual obligatory components. Specifically, the illocutionary component of statements made between players—the assertive, expressive, or regulative (imperative) force of the statements—

¹⁰⁴ The association of market access to the achievement of the good life will not appear here. Such a connection seems to be a “given” in much of political thought since the early Greeks. Note Aristotle’s argument that the attainment of human excellence is tied to the engagement in exchange of material and immaterial goods which one has produced in a market forum.

instructs the listening player how s/he ought to respond to the speaker's statement. The performative element provides clues to the listener what materials s/he is to use to satisfy the speaker's statements. In this, the speaker offers to the listener clues and directions for conducting actions that follow from the desire to fulfill the request embodied in the statement. In exchanging speech-acts, the speaker and listener obligate each other to fulfill contractually requests and accept actions, given the information supplied in the speech act. By being a speaker, the player obligates him or herself to providing the explanatory conditions and justifications for making the initial requests. By being a listener, the player obligates him or herself to fulfilling the request based upon the information given.

In this situation, while it would be most efficient to assume complete information on the part of both players, as is done in much modeling of pure economic transactions, such an assumption cannot hold. In the communicative action situation, information asymmetry is a given pre-condition, equivalent to the asymmetric ownership implied in the original market condition. This condition is pre-given as the very possibility and very need for achieving understanding requires that players do not have symmetrical information on all knowledge dimensions. Specifically, while a speaker may have an understanding of the objective world, s/he may not have complete understanding of the social or subjective worlds. It is, in part, because of the condition of asymmetry that we must consider the role that obligations play in understanding speech-acts.

To provide an example: Player A instructs player B to "pick up your shoes off of the table." In this, speaker A offers to B a statement with the illocutionary force of an

assertion (move x object in y direction)—she desires B to act in such a way that the material conditions (the shoes will no longer be on the table but will be up from the table) will change according to her instructions. In this statement, player A gives the propositional statement that it is the shoes of player B to act upon in a directionally determinate way. In putting forth this speech-act, player A has entered the following contractual terms for player B to accept “if you act in such a way that your shoes are no longer there (on the table), I will be satisfied” and “I have been honest with you that it is your shoes that I wish to be moved, not the cat.” Just as players enter the market place with an expected vocabulary held in common of buy, sell, trade, money, and so on, in this example exchange of the shoes, the players have an expectation of a shared vocabulary that each has committed to that contains material, directional, normative and contractual elements. In this setting, if both players are to be satisfied—player A satisfied that her place-setting is free of player B’s shoes and player B satisfied that he has satisfied player A’s conditions (and not incurred the sanctions of not performing player A’s request)—then each must have this background knowledge held in common and must abide by the implicit contractual terms of the communicative exchange.

In this and other communicative action situations, however, each player has the ability to contest (on yes/no grounds) the validity of statements of the other. To revisit the example: by instructing player B to remove his shoes from the table, A is offering to B the opportunity to contest the validity of A’s statement through the following embedded questions: “are those my shoes?”, “are those shoes”, “is that a table?”, “is it right that the shoes should be moved?”, “is it right that you should request of me to

move the shoes?”, “are you sincere in asking me to move the shoes/ will you be satisfied if I move the shoes?.” Using this series of questions, speaker B can challenge speaker A on individual points or may summarily reject or accept the conditions and (not) move the shoes. Yet, in doing so, player B is then obligated to follow through with his validity questioning and must provide the material and normative conditions necessary to back his own claim of invalidity on A’s part. In summary, in the communicative action setting, players engage in communicative exchange, just as they would exchange to satisfy material needs in an economic exchange, but here with the intent of satisfying the need for understanding and reach an agreeable position.

Speech Acts

Though I have introduced the basic components of a speech-act—the illocutionary and propositional elements—I give here a few more specifications in order to fully understand the interaction of speech-acts in a rational framework. Speech-acts are potentially useable in the context of promoting legitimization projects because they communicate performatively to each participant the states of subjective being and interest and because they do this publicly, or within the objective and social worlds. As knowledge is tri-partite in Habermas’ estimation, we can conceptualize information asymmetry as a multi-dimensional concept and must conceptualize understanding as the synthesis of multiple dimensions. This factor introduces the necessity that speakers and listeners in the situation offer full disclosure to the best of their understanding.

Speech acts, when exchanged publicly as is required by the very nature of actions purposively oriented towards the development of understanding, are generative of the three forms of knowledge Habermas supposes make up the types of human knowledge. The public character of speech-acts, as formulated by Habermas is essential to the project of understanding, and is critical for any efforts at modeling communicative action within the boundaries of the requirements of communicative rationality. As Heath has argued,

In Habermas' view, speech acts by drawing upon a set of shared linguistic resources, necessarily involve the agent in a set of public commitments, and therefore cannot be modeled instrumentally. In Habermas' terms each speaker raises a set of 'validity claims' through her utterances, claims that can only be redeemed through appeal to public justificatory resources. To understand the utterance is, in this view to know the conditions under which these validity claims could be redeemed. Thus public accountability is an intrinsic feature of linguistic communication. For Habermas, this serves as the basis for the division of action into two primitive analytic types: instrumental action and speech acts. He argues that these two forms of action correspond to two different 'stances' that the agent can take toward others. Instrumental action involves a simple concern with the success of action. Communication, on the other hand, requires that the agent adopt what Habermas calls the performative stance. The adoption of this stance commits the agent in a series of idealizing presuppositions. So while the success of an instrumental action rests in the attainment of its objectives, the success of a speech act rests in the achievement of mutual understanding (i.e., acceptance of the commitments undertaken) (2001, 19).

Due to their non-instrumental nature, speech acts are not understandable formally. The motivating factor for speech acts are outcomes or objective goals derived from a priori sources such as private motivations.

Likewise, speech-acts outside of social contexts are incomprehensible. By outside of social contexts, I mean that speech acts understood as individual dialogues

(such as Augustinian thought) is the province of one individual alone, or outside of the context of coordination. All speech acts, because of their public character, oriented towards the goal of reaching mutual understanding (*einverständnis*), are part of the coordination of social action. That we are able to coordinate actions indicates that we have communicated to each other publicly and with the assumption of mutual obligation.¹⁰⁵ That we achieve legitimately based coordination of action indicates that we have engaged in communicative action. On the other hand, if we have achieved coordination through neglecting some actors who may not share in the normative understanding of the legitimate bases of the action, we have engaged only strategically. To model speech acts, it cannot be that an actor achieves an individual outcome without the input of another's participation and outcome. Further, in the context of speech act legitimation we must accept as a basic condition that each player will be monitoring the next for his or her redemption of the obligatory promises each has put forth in the original speaking moment.

As Habermas supposes there are three types of validity claim to be redeemed within the context of communication—truth, rightness, sincerity arising from the nature of the speech act the speaker uses (assertion, regulation- imperative or expressive). When an agent asserts that a given state of affairs obtains, she claims to do so truthfully. When she expresses the intention to perform a particular action, she claims to do so sincerely. And when she requests that the other perform an action, she claims to do so 'rightly' that is legitimately, or with authorization. Thus, corresponding to the three basic speech act types are three validity claims: truth, rightness, and sincerity. Understanding the speech act involves understanding the conditions under which the appropriate validity claim is satisfied: what state of affairs would have to obtain for the agent's assertion to

¹⁰⁵ In some of Habermas' work, he makes the case that the enforcement of communicative norms may occur through recourse to a third party (a public) with the ability to participate and enforce the terms of the communicative contract. I will not deal with this here, as the insertion of a third party enforcement power to the model would make it ever more complex.

be true. What actions the agent would have to perform in order to be considered sincere, and what norms would have to be in force in order for the agent's suggestion to be legitimate (Heath 2001, 31).

We can suppose that in a speech act, reason-giving, communicative situation, that players will monitor each other on these three dimensions. That is a necessary (but off-putting perhaps) requirement that must be dealt with in modeling full understanding and, importantly for the context of this chapter, setting up the conditions to understand the rationality possibility of communicative action in public administration.

Expressive Efficiency

The rationality assumption, coupled with the tripartite knowledge structure requires that actions must be defensible via speech-act using documents and multi-dimensional communication of legitimating documents, procedures, and speaker positions. However, there is an additional standard of rationality in the context of citizen-administrator communication in acts of public administration. The standard, I suggest is expressive efficiency. According to the Habermasian standard of rationality in communicative engagement, other forms of validation are acceptable beyond merely the production of validated documentary evidence, such as is the first preferable route of defense in public administration. Specifically, Habermas accepts that other modalities of expression are useful for the context of communicative action. Though Habermas does not specify at great length the content of these additional modes of rational validation,

these, I argue, following Warren (1996), and Dewey (1924, 1927), may include the appeal to authority, the appeal to emotion, and the appeal to values of community.

The use of documentary evidence falls well into the appeal to authority category. However, there is a caveat implied by expressive efficiency. The standard of expressive efficiency requires use of the best means of validation in the first resort. The “best” means of validation are those that minimize time used while maximizing explanation. The use of documentary evidence supported by direct, means-ends deliberation about the meaning of concepts or expressions therein is the “best” method for use in the first resort. In this, administrators explain concepts using additional documents and/or direct verbal explanation in language that is consciously aware of the depth of shared knowledge between the parties. Documents offered need to be in the order from those pertinent to the situation, to those broader, to those broader still.¹⁰⁶ Explanation should go from the particular to the general as the level of abstraction employed in constitutional law arguments (for example) may obscure or overshoot the level of analysis or explanation asked for or required by the citizen.

Likewise, the explication of constitutional legal arguments may overrun the ability of the administrator. Expressive efficiency as a standard places limits on the level of argumentation used, which by extension limits the uses of argumentation available to each administrator alone.

¹⁰⁶ A full classification of documents cannot be provided here. Nevertheless, a simple typology would range from local ordinances, to county policies, to state laws, to agency authorization policies, to federal law, and finally to the constitution.

The generality that constitutes the meaning of a rule can be represented in any number of exemplary actions. Rules lay down how someone produces something: material objects, or symbolic formations such as numbers, figures, and words.... Thus one can explain the meaning of a constructive rule through examples. This is not done by teaching someone how to generalize inductively from a finite number of cases. Rather, one has grasped the meaning of a rule when one has learned to understand the exhibited formations as examples of something that can be seen in them. In certain situations, a single example can suffice for this: 'It is then the rules which hold true of the example that make it an example'. The objects or actions that serve as examples are not examples of a rule in and of themselves, so to speak; only the application of a rule makes the universal in the particular apparent to us (Habermas 1984, 16).

On the other hand, appeals to constitutionality of a rule are not useful for a first defense.

Constitutional appeals merit use only after appeals to specific documents and cases have failed.

The reasoning behind this rule lies in the limited nature of knowledge that both parties will have. Though citizens and administrators can understand one another as parts of the whole society, each has graduated knowledge of the context of the other (though because of the socialization of the lifeworld, each knows at least enough to communicate with the other). Because of this graduated knowledge, particularly on the side of the administrator given administrative intimacy with the law relative to the citizens, recourse to constitutional legal arguments in the first instance will serve to stymie further legitimation discussion, as it will overrun the ability of the citizen-listener to serve as a speaker in the reciprocal instance.

The basic expectation of peer-to-peer knowledge also supposes a peer-to-peer commitment (as has been elaborated above regarding exchange relations), meaning that a speaker who intentionally goes outside of the listener's ability to hear and reciprocate

as speaker has disengaged from communicative action commitments and is acting strategically.

Communicative action is able to secure social integration because it is underwritten by a set of commitments made by all participants to justify the rules that they follow and expect to be followed. But, these commitments can easily outrun any participants' actual ability to redeem them. In fact, given the structure of Habermas' speech act theory, the commitments that agents make when engaged in communicative action necessarily outrun their actual capacities to redeem them (since every speech act is said to raise three validity claims). As a result, agents explore these commitments and the set of possible justifications only when they are explicitly challenged to do so or when one of the rules they are following becomes problematic (Heath 2001, 43).

The standard of expressive efficiency goes both ways—it is not solely the role of the administrator to abide by the requirements of expressive efficiency. Citizens should utilize defensible reasons—those reasons that can be deliberated upon by actors sharing the same life world—in the first resort. Specifically, the assertion that a standard of admissibility to the Medicare program should not be challenged on rules of constitutionality in the first instance, but should initially be challenged on the basis of the case at hand. Both parties should be prepared to defend themselves at the highest level if it happens, but neither should expect it at first.

However intuitive and restrictive the requirement of expressive efficiency may seem, the appeal to emotion may fit the standard if used as is appropriate based upon the case. The appeal to emotion must follow the standard of expressive efficiency in the following way: non-emotional evidence should be utilized in the first resort, but as the answers (on either side) are found wanting, emotions may be allowed to enter so long as

the deployment of emotion does not cause the conversation to transition from a communicative action to a strategic action. That is, emotions are not a means to achieve success when reason-giving argumentation fails. Emotions are damaging in a communicative action framework if deployed as a means to success rather than the establishment of deeper isomorphic understanding. The requirement that communicative action remain the norm is restrictive for the use of emotions such as rage, anger, jealousy, or even happiness. However, to the extent that the deployment of emotion exposes tensions in the fabric of the lifeworld shared between the parties, it may be used. Emotions provide additional information to assist speakers in the conveyance of information itself. It can augment the stated needs of individuals to have rules/norms made valid to them. Appeals to emotion fit the standard of expressive efficiency and rationality if used to point to holes in the background knowledge shared between the parties. If they offer additive value to the task of interpretation, emotional appeals are useful.

The task of interpretation can now be specified as follows: the interpreter learns to differentiate his own understanding of the context—which he at first believed to be shared by the author but in fact falsely imputed to him—from the author's understanding of the context. His task consists in gaining access to the definitions of the situation presupposed by the transmitted text through the lifeworld of its author and his audience. ... He seeks to understand why the author- in the belief that certain states of affairs obtain, that certain values and norms are valid, that certain experiences can be attributed to certain subjects—has made certain assertions in his text, observed or violated certain conventions, expressed certain intentions, dispositions, feelings, and the like. Only to the extent that the interpreter grasps the reasons that allow the authors utterances to appear as rational does he understand what the author could have meant. ... Thus the interpreter understands the meaning of a text only to the extent that he sees why the author felt himself entitled to put forward (as true) certain

assertions, to recognize (as right) certain values and norms, to express (as sincere) certain experiences (Habermas 1981, 131-132).

The utilization of appeals to emotion in this way brings in the last point about the standard of expressive efficiency as an amendment to the rationality standard.

In a plural society, particularly one founded in part on republican values such as the US, the values of the community form an important part of the lifeworld, a precursor necessary for the establishment of the public sphere, system, and further communicative action for legitimacy. The appeals to the values of the community also come with caveats and standards for utilization. On the administrative side, the argumentative point “that is the way that we do this here” is too thin an appeal, based on only limited values inaccessible to all. In order to be legitimate, elaboration must be available to provide the citizen knowledge about who “we” is, why “we” are different from “them” (and who the parties are in reality), and why “this” can or does vary by situation. On the citizen’s side, the argumentative point that “this [rule] does not apply to me/us” requires the definition of “me/us” be specific in reference to terms that posit the “me/us” as unique in ways meaningful for the context.

For the utilization of appeal to community values, both sides must be willing to engage one another based on deconstructing the ontology and epistemology of the communities they purport to represent. That is, both parties must be able to self-define their ontology in such a way that their epistemological assumptions that characterize their definitions of being are clearly comprehensible to an outside party.

For administrators, this means substantiating the origins and depth of their expertise or positions to citizens. This, in practice, entails more than explanations of “because I have X set of credentials and you don’t”, it includes offering statements of explicit credentialing as well as the offering of experiential knowledge between the actors. There should be reflexive sharing of expert bases for decisions—specifically, each speaker should be willing to offer their fields of expertise as provisionally valid for the situation while accepting as provisionally valid the expertise claims of the other participants. This entails reflective listening on both participants’ parts, particularly listening of the part of the administrators to the citizens’ experience under the system *as expertise* (Fischer 2005).

Unfortunately, the amendment for expressive efficiency has consequences for those persons who define their ontology, epistemology, and emotional lives based on non-reason-giving argumentative points, such as being part of a “chosen people”. Religion and religious values are difficult to subsume into this communicatively acting framework. In other words, in addition to a rationality requirement, Habermasian and public administrative rationality includes an implicit secularist requirement. However, the standard of expressive efficiency, wherein speakers must use defensible reasons in the first instance suggests that religious reasons (or reasons of revelation similarly oriented), does offer some argumentative room for validation between parties of differing religious orientations. However, the utilization of such grounding must be done after recourse to other deliberative forms have been exhausted. Even then, the

stricture of rationality and expressive efficiency limits the utilization of religiously based argumentation.¹⁰⁷

The Orientation Towards Understanding

Grounded in rationality and expressive efficiency employed on both sides, mutuality and speech-act formation founds the final requirement of an orientation towards understanding. In much of Habermas' own work, and indeed in much of the secondary literature, the importance of the orientation towards understanding cannot be understated. Understanding (*einverständnis*) is the final objective of communicative action. As a final requirement, it must encapsulate all of those standards that provide the make up for it. Although I have utilized differing terminology in order to provide additional specificity, we can look to Habermas for a similar description of the multi-layered nature of the orientation towards understanding necessary for communicative action.

Communicative action relies on a cooperative process of interpretation in which participants relate simultaneously to something in the objective, the social, and the subjective worlds, even when they thematically stress only one of the three components in their utterances. Speaker and hearer use the reference system of the three worlds as an interpretive framework within which they work out their common situation definitions. They do not relate point-blank to something in a world but relativize their utterances against the chance that their validity will be contested by another actor. Coming to an understanding [*verständigung*] means that participants in communication reach an agreement [*einigung*] concerning the

¹⁰⁷ The difficulty of reconciling revealed orientations to life and understanding with *a priori* secularist (modernist) rationality is a major concern for theorists of administration and politics. While I acknowledge the importance of this, the space necessary to elaborate upon this would consume the better portion of the present project and must wait until later.

validity of an utterance; agreement [*einverständnis*] is the intersubjective recognition of the validity claim the speaker raises for it (1984, 120).

Speakers and hearers, public administrators and citizens and vice versa, must deploy speech and action according to rationality, expressive efficiency (in its attendant parts), and mutuality with one another if they are to reach a common understanding.

The appeal to multiple worlds of interpretation allows for speakers and hearers to reach a deeper understanding. Yet, in the situation of developing an understanding on rules legitimate for both parties, the matter of arriving at a consensus position becomes problematic. It is in the development of a consensus position of understandings between persons that we run into the great difficulty of using communicative action in public administration. Specifically, how do we import an action oriented towards understanding into a system where instrumental success is the measure of the “legitimacy” of the system as it is in public administration?

“Between-ness”

I have given the basic definitions of illocution and performance and will here move on to the seemingly innocuous “between” in the primary definition given above. It is a basic assumption in the structure of political theory that players are at least committed to participation in politics.¹⁰⁸ This basic simplifying assumption not only

¹⁰⁸ Such is also an assumption in game theoretic models: theorists here take as a given point that the imaginary players are similarly interested and committed to engaging in the game at all. This assumption

believes the genuine complexity of modeling commitment problems, but also makes modeling acts of coordination that are more than purely strategy based quite difficult. Much of this problem of commitment has been “resolved” by the introduction of cooperative gaming and non-strategy solutions, but these innovations still retain a basic rationality assumption (namely, individual instrumentalism) that must be altered to understand and model the between required of communicative action.

Habermas’ between is the realization of a position of full mutual understanding where the players can rationalize the world together. The between-ness required in communicative action is shared or ‘held in common always already’ in the decision situation. To re-invoke Dewey, it is the presence of a symbolic vocabulary of common sense. To follow Habermas, the between required is in his original formulation of the discourse and universalization principles.

The discourse principle states that “Only those norms are valid that meet (or could meet) with the discursive approval of all affected,” where discourse means the argumentative testing of the rightness, truthfulness and or sincerity of the grounds for action.¹⁰⁹ It is the participation of both—participatory sharing of claims and counterclaims to validity—that fosters discursive approval or, in other words, the approval of a norm held subsequently between the players. The universalization

may be, in some ways, faulty and may avoid the most important question, namely “How do we get people to the table at all?”

¹⁰⁹ This is a discussion of the form of practical discourse rather than ethical discourse. Habermas himself makes a considerable distinction between practical and ethical discourse that I will leave to the side here. I take as given in the administrative legitimation context that practical discourse will be the primary form of discourse. Ethical discourse I suggest (following the distinction provided by Habermas) is the province of constitution making and the authorization of a society itself, not the legitimation of subsequent rules issuing there from.

principle states, “A norm is valid if and only if all affected can accept the consequences and side effects its general observance can be expected to have for the satisfaction of everyone’s interests”. Implicit in the universalization principle is a preference ordering of players that is non-strategic in the pure sense; players may re-optimize their preferences in subsequent iterations in order to satisfy the universalization principle and promote the sense of between-ness required to satisfy the strictures of communicative action.

Given and Provisional Situations

Fifth and lastly, we must explore the condition of a given situation. Habermas, in part because of his theory of “knowledges” and human understanding, proposes that our achievement of understanding can only be done in a given context or situation because our knowledge does not permit our discourses to be all-encompassing. Here we can hear echoes of Dewey again. Specifically, Dewey’s conceptualization of reaching understanding, as must be done in a democracy, requires that we deliberate on the shared experience of a given situation. We discourse on those topics that, per our interests, experiences and needs, require explanation and legitimation. We do not ask for the validation of norms given for topics which have not affected us or do not affect us, nor can we apprehend in a discourse participatory way whether the norms that ground an assertoric, regulative or expressive statement of something we are uninterested or inexperienced in are right, sincere or true. For forging mutual understanding, we “use” a given, limited situation where peers have an equal opportunity for experiencing the

situation as well as an equal interest in participation. Without each of these characteristics, the necessary equal potential for reaching a horizon of symmetrical understandings on the three dimensions of understandable speech-acts is unattainable.

Additionally, when understanding the knowledge that each player brings to the situation, as well as the knowledge each may obtain through the communicative action discourse, the requirement of provisionality must also obtain.¹¹⁰ Specifically, provisionality suggests that knowledge changes in accordance with the situation. The provisionality requirement is not inserted to provide an outlet for historicism or relativism as crutches for explaining recourse to strategic action, but rather a requirement that allows that players' knowledge to be adaptive. Consequently, in the communicative action situation, the players must approach the initial conditions as cooperative and adaptive with respect to knowledge development between them.

The boundedness of knowledge within given situations must also be understood as a temporal restraint. Specifically, although dialogues of legitimation could potentially go on forever (particularly if we insert the notion of a corresponding ethical discourse to accompany the practical discourse) to understand the rationality of communicative action, it must be stated that the dialogue will cease once all persons agree to agree.¹¹¹ The temporal requirement of the cessation of conversation when *einverständnis* seems to obtain for all players on all knowledge dimensions may limit conversations and may

¹¹⁰ See Ellis (2004) for a description and definition of provisionality and how this interacts with democracy and democratic theory.

¹¹¹ Here I recall Warren's (1996) quotation: "Democracy is not an endless committee meeting."

predispose recourse to strategic action in the final analysis, but this requirement should be inserted as a corresponding requirement of given situations.

A Summary of Communicative Action as Procedure

To summarize, in order to engage in communicative action, we must bear in mind the following requirements:

- 1) Communicative action is engagement on multiple dimensions where players monitor one another's statements
 - 1a) monitoring is tripartite on each dimension of illocutionary force and communicative redemption
 - 1b) monitoring for the rightness of normative regulative-imperatives
 - 1c) monitoring for truthfulness of objective assertions
 - 1d) monitoring for sincerity of expressions of social context
- 2) Communicative action must be cooperative and adaptive
 - 2a) rationality assumptions are mutual and communicative, not individual and instrumental
 - 2b) the outcome of communicative action is cooperation itself
 - 2bi) communicative action outcomes can precede the construction of instrumental action in order to resolve initial commitment issues
 - 2bii) measurement of cooperative outcomes is non-instrumental
 - 2c) communicative action is iterative games; communicative action cannot be one-time
 - 2ci) in order to achieve adherence to the discourse and universalization principles, players may re-optimize vis-à-vis each other for subsequent iterations
 - 2cii) re-optimization that is non-cooperative (not oriented to satisfying U) is a communications ending move as it renders future action on the part of the re-optimizing player strategic (non-communicative)
- 3) Players must be equal
 - 3a) equality of moral being
 - 3b) equality of knowledge potential

- 3c) players have information asymmetries between them as a given condition
 - 3ci) measurement of information asymmetry according to the tripartite structure of knowledge
 - 3cii) players have an interest asymmetry that is proxy measured by player knowledge
- 3d) players are equally committed to engagement in communicative action
 - 3di) players have an equal belief in the benefit of legitimacy and mutual understanding
 - 3dii) players have an equal desire for the legitimacy and mutual understanding
- 3e) players have equal capacity for attaining mutual understanding
- 4) Construction of communicative action for a given situation
 - 4c) discourse may cease upon achievement of communicative action-- when players acknowledge to one another that they have achieved *einverständnis* on the three horizons of knowledge
 - 4d) the knowledge of a given situation is provisional

Communicative Action in Public Administration

The initial purpose of communicative action is to coordinate action. To do so in a climate of legitimacy, there must be discursive argumentation about the norms that guide and underpin the actions subsequent. The imperative of coordination cannot be relaxed or alienated from the full model. Nevertheless, because we model communicative action iteratively, we can relax the 'coordination of output assumption' in early individual iterations of the model. In the final game, however, the coordination of output must be the final measure of communicative action in public administration contexts.

As scholars of contemporary governance and network management make clear, implementation (the act of policy administration) is about the coordination of action

between multiple players.¹¹² Administration of a given rule in a social environment cannot occur without the initial task of coordinating the objective, social and subjective worlds of the players involved (Grin and van de Graaf 1996). In the administrative context, coordination and cooperation require that both the citizen player and administrative player come to understand their position vis-à-vis the outcome (compliance in the case of regulation) as co-productive. We can define co-production as a productive pattern of relationships between actors (providers and consumers), governed by a system of formal and informal rules reinforced through cooperative interaction, where neither player can achieve optimal outcomes without the effort and input of the other (Lam 12, 16-17). Successful co-production must necessarily be communicative as it necessitates the convergence of outcome goals between multiple actors and requires an appreciative stance of each player with respect to the others.

In the elaboration of communicative action, the players are speakers and listeners. In the administrative context, we define them as citizens and administrators. It is important here to note that these actors will retain the critical assumptions of speaker and listener, most significantly the ability of each to assume the role of the other. Consequently, the use of citizen denotes “administrator-citizen” and administrator denotes “citizen-administrator”¹¹³ In the context of legitimation narratives and the

¹¹² “Governance relates to any form of creating or maintaining political order and providing common goods for a given political community on whatever level” (Risse 2004, 289). “Governance is the way the government gets its job done” (Kettl 2002, xi). “Governance is a way of describing the links between government and its broader environment—political, social, administrative” (Kettl 2002, 119). “[Governance] is the processes and institutions, both formal and informal that guide and restrain the collective activities of a group” (Keohane and Nye 2002, 12).

¹¹³ I elaborate on the distinction between citizens and administrators elsewhere and will not go into this again here.

elaboration of reasons for action (discourse on rules) both players should be conceptualized as equal vis-à-vis the other, despite the eventual inequalities that arise in the final action context. Because the outcome is cooperative and the objective is the mutual acceptance of co-production conditions, we must consider the final effect as co-produced.

To elaborate—given Habermas’ tripartite knowledge structure and the given condition of trigeminal asymmetry of information on the part of each player—it is known that in each iteration one player will gain relative to the other on a single dimension while the other will gain on another (or potentially the same) dimension. The gain in the subsequent iterations however, does not dissipate in subsequent iterations as the gains “carry-over” to subsequent games. This is formally a case of re-optimization,¹¹⁴ but the gains here are not individually derived or intended for individual benefit exclusively. The exponentiation of knowledge gains is necessary because of the communicative nature of the game rationality that is a given condition of the set. As the game progresses, the input of the other raises the understanding of the first (and vice versa). Consequently, in subsequent iterations, the players begin with a new state of understanding and knowledge of the other player linked directly to the product of the work each has put in previously as well as the shape of the final product. The importance of the co-produced effect redoubles as the players re-optimize their strategies with respect to the other. As each re-optimizes to accommodate the basic conditions of the universalization principle, the values each assigns to the conditions of the game and

¹¹⁴ The definition of reoptimization used here is a selective change in utility given the appearance of new constraints. This is drawn from a selection of economic literature including: Roufagalas (1994, 88)

the value of the outcome of cooperation (co-production of policy outcomes) change in relation to the other.

In the situation of citizen-administrator deliberation on the legitimacy of a regulatory action—specifically where cooperative co-productive compliance (as measure of mutual understanding) is the socially desired objective—the expectation of the capacity for understanding, given asymmetric information, must hold. In the regulatory situation, where assertions and imperative are traded from the top for expressions and assertions from the bottom, the tripartite character of knowledge must be upheld as a basic conditionality of the exchange occurring. However, we must note that the objective world and social world likely take priority in the exchange of knowledge between players. The major categories of information traded between the players are objective imperative statements and expressions of social “fact” desirability. Yet the subjective world between the citizen and administrator mediates the relationship between the two. Therefore, we must bear in mind the importance of intersubjectively regulatory statements.

In the construction of Habermas, this intersubjective regulatory function is largely pre-given by the condition of a symmetrical lifeworld (or background knowledge) held among the communicators. Though it is a critical component of the mediation of final co-productive outcomes, the creation and maintenance of the lifeworld is beyond the primary purpose of incorporating communicative action into dialogues on public administration and will be left to the side in the form of an additional condition-- symmetry of expectations for intersubjective regulation.

Conclusion

Communicative action, because of the assumptions embedded within does not conform to standards of instrumental rationality and is not, generally, amenable to situations where instrumental or economic success are the standards of excellence, such as in some forms of public administration. However, though the use of communicative action does not conform to instrumentally rational standards, the assumptions and conclusions of communicative action are significant. As Waldo (1984), Friedrich (1940), Long (1962), Herring (1936), Simon (1947), Terry (2003), Cook (1996), Frederickson (1997) and Kettl (2002) (among others) have made clear, the employment of strictly instrumental rationality does not provide all things necessary for the functioning, and more importantly, legitimation of the state and state actions. Consequently, we should look to the employment of communicative action as an alternative structure useful for the endeavor of legitimating the state through the administrative institutions.

CHAPTER VI

BUREAUCRACY, CITIZENS, LANGUAGE, AND LAW: THE SHAPING OF THE PUBLIC SPHERE

In the modern welfare state, it is an impossible task to separate the organizations that determine the welfare of the citizens from the welfare of those that provide it. Disentangling the intertwined democratic intentions, laws, representation, subjective desires and objective provision of material satisfaction in the welfare system, is a fool's errand if we insist on using a holist theory of the state. While, ostensibly and theoretically, "the state" is the provider of the general welfare, in the present system it does so only indirectly. The aggregations of organizations that act in the name of the state provide the primary modes of social welfare.

The state is an aggregate of actors who may or may not directly identify *as* the state. Yet it is not a complete fiction. Rather, the welfare state mimics the state of the common will; within the one, there are many, yet it would be shortsighted to assert that there is not the one as state *in toto*. Conventional ascriptions of statehood such as power, legitimacy, coercion, force, and normative validity are not characteristics solely of the state. These characteristics are aggregates of those qualities of the agencies that provide state welfare.

The description of the state in pragmatic terms—in terms of its symbols and consequences—must be done at the level at which these characteristics are the properties of actors outside of the aggregate. That is, we can know the state pragmatically when

the state enforces its power or coercion in the sphere of our lives as practiced. When citizens encounter the power, legitimacy, coercion, force, or normativity of the state, they first sense it through their encounter with a state agency. Specifically, the state is available to citizens through their relationship with the administrative agencies they encounter.

Thinking about the state and sovereignty requires a kind of dual visions... we need to be able to do justice to the reality and consequences of the state-effect... we also need to be able to understand these effects as effects, which requires attending to the activities through which the state is brought into being and reproduced, and particularly to the desires, projects and aspirations that animate those activities (Markell 2003, 27-28).

Disentangling the felt effects of the state from the state as theory is the purpose of this chapter.¹¹⁵ This chapter is distinct from previous efforts to do so as it explores the bureaucracy as an instrument available to citizens to understand the state as experienced in their daily lives. I attempt to do so anew, since the nature of the state and the citizens' relationship to it is undergoing subtle but important changes as the networked structure of government and governance become the new norm of statehood (see, for example, Farmer 2005).

The adaptation of the state to an alternating democratic-republican current and a diversifying, plural population requires that we rethink the role of the citizen as sovereign in differing terms. This has come about primarily through the notion of a clientist or consumerist model where citizens are consumers of the state via the

¹¹⁵ There have been numerous attempts at this project by previous scholars. Many of these attempts focus on the unmediated effects of the state upon citizens. Examples of this in political theory include Foucault (1994), Bendix (1945), Cohen and Arato (1992), and Habermas (1996). Examples of this in public administration scholarship include Goodnow (1967), Long (1962), March and Simon (1958), Simon (1947) and Waldo (1984).

provisions of the bureaucracy (Pegnato 1997). This adaptation of the citizens' role to state institutions has altered the way in which thought about the relationship between citizen and state must proceed.¹¹⁶ At the present time, marked by the failure of legislative institutions' members to reconnect with citizens and provide true and full representation, the importance, and salience of citizens' concerns withers. In this time, when laws passed in citizens' names are often compromises between competing identity groups and corporate institutions (not citizens in the sense of *citoyen* or commonly interested citizen) the state means less than it did in previous days. Consequently, I propose that to assess the effects of the modern state, the points at which citizens and government engage require decentralization and devolution to the individual agency (perhaps even individual agent) level. From this decentralized position, we may "recentralize", into the power of executive agencies, the responsibility for transmission of normatively valid citizen claims to the institutions constitutionally responsible for the provision of sovereign law.¹¹⁷

Within this chapter I parse three major effects that the bureaucracy has upon the way that we can sense and understand the state— through language (Foucault 1984, 1994; Balfour and Mesaros 1994; Gadamer 1999, 2000), physical structures (Goodsell 1977, 1988, 1997), and process expectations (Katz et al. 1975; Jones, et al.1977;

¹¹⁶ The position that we must view the state through the lens of the bureaucracy or magistrates is not a uniquely new idea. Adam Smith, in *The Theory of Moral Sentiments* and *The Wealth of Nations* alludes to the importance of bureaucracy (what he terms "magistrates" or the institutions of public service) to the state and economy. Though he does not make the connection explicit, the notion of the invisible hand advocated in *The Theory of Moral Sentiments*, that the invisible hand is that system that provides justice in the society, requires an administrative (policing) component. The idea of bureaucracy as public services provider is a key notion in classical economic theory, one that I will return to throughout the chapter.

¹¹⁷ This agency-centered perspective I develop from Wamsley, et al. 1989: 114-162.

Mladenka 1977; Vedlitz, Dyer and Durand 1980; Sharp 1984; Peterson 1986, 1988; Goodsell 1989, 1994; Serra 1995).¹¹⁸ I argue that these three effects have real consequences for citizens' perception of and interaction with the state. Likewise, I argue that these three effects alter the nature of daily interactions between citizens in a communicative, discursive environment such as the public sphere. Through language, process expectations, and participatory structures, bureaucracy distinctly shapes the ordinary daily behavior of citizens. Bureaucracies, through these influences, provide the very scaffolding upon which "being" and deliberations in the public sphere rest.

Bureaucracy, State, Economy, and Society

As governments have been called upon to do more and more important things, the degree of popular democratic control over separate public or governmental decisions has been gradually reduced. In a real sense, Western societies have attained universal suffrage only after popular democracy has disappeared. The electorate, the ultimate sovereign, must, to an extent not dreamed of by democracy's philosophers, be content to choose its leaders. The ordinary decisions of government emerge from a bureaucracy of ever-increasing dimensions. Non-governmental and quasi-governmental bureaucracies have accompanied the governmental in its growth. The administrative hierarchy of a modern corporate giant differs less from the federal bureaucracy than it does from the freely contracting tradesman envisaged by Adam Smith (Buchanan 2005, 3).

In a truly capitalist, free market, economy there would be no possibility (or perhaps even need for) redressive claims. That is, under conditions of true market freedom, there is no governmental system necessary to accommodate the adjudication of

¹¹⁸ The impact of process expectations is captured in the literature on citizen satisfaction with the bureaucracy. I will argue here that citizens are most satisfied when their expectations of the process and outcomes of government contact are met.

claims. However, in a society motivated by justice and the attendant virtues of a just society, there must be an adjudicatory power to mediate the competition of interests in a market. To attain the goods of justice, there must be a degree of systematic cooperation, something not found in the disaggregated world of the truly competitive market. There must be an “invisible hand” that produces the good of distribution of necessary opportunity and goods.¹¹⁹ As the truly free market is fictive for any society for which welfare matters, even the welfare of a select few, the immediacy of redressive claims are paramount. As the state attempts to regulate/ mediate/ attenuate free market competitive anarchy, governmental adjudication structures are established which are “real” enough to absorb and resolve claims of redress.

According to Adam Smith, “The first and chief design of every system of government is to maintain justice” (Smith 1762, quoted in Long 2006, 301). The sense of justice imparted here is “justice in the sense of the peaceful maintenance of the citizens’ perfect rights to property. Like Hume, Smith maintained that the protection of property was the first necessity of every system of government worthy of the name” (Long 2006, 301). The need to resolve redressive claims founds governments, as we know them presently. Specifically, resolution of claims for redress underpin policy statements—statements of law-- ranging from charters to constitutions to contracts, each of which require an enforcement structure constraining the effects of such devices utilized in a truly free economy society. There must be administrative structures to

¹¹⁹ In *The Theory of Moral Sentiments*, Smith uses the phrase invisible hand to describe the process by which the economy “is said to produce an equal distribution of necessities, as opposed to luxury goods” (Long 2006, 289).

address the enforcement of laws passed to assist the amelioration of redress. Law, in the fullest sense, organizes the claims themselves and their institutional adjudication.

These [rules of law] include not only power-conferring norms that furnish government institutions with their special jurisdictions or even constitute these institutions to begin with, but also organizational norms that lay down procedures according to which legal programs come into being and are dealt with administratively or judicially. Law by no means exhausts itself in behavioral norms but increasingly serves to organize and regulate state power. It functions as a system of constitutive rules that not only guarantee the private and public autonomy of citizens but generate government institutions, procedures, and official power (Habermas 1996, 144).

It is within theories of political economy, statehood, and morality—those theories of politics elaborated by Adam Smith-- that we begin to see how the full nature of the state as mediator of economic redress claims and the state as actor come together in the aspect of policing redress.

Stable and peaceful relations of interaction and exchange in commercial society require a supporting framework of both legality and civility. They [laws, institutions, and morals to protect and stabilize private property and contractual exchange] do so by elaborating 1) an ethic of propriety and 2) a jurisprudence combining economic attention to “police” with a distinctive and nuanced theory of justice. ‘Police... signifying policy, politicks or the regulation of a government in generall [sic] (Smith quoted in Long 2006, 300).

Long goes on to elaborate on Smith’s understanding of the police function of society as “the more complex, general, and at times elusive principles of property and propriety. The conceptual arena... for his [Smith’s] thinking about property and propriety, and their interrelationship in civil and commercial society, is justice” (2006, 300).

Moreover, justice for Smith is certainly an administrative task.

State control over the economy in the post-feudal, non-totalitarian state is non-absolute. Particularly in democracies, the state has no complete control over the economy, as it cannot fully harness the productive capacity of its members as its own. In the modern world, states and economies are less hierarchically situated co-regents than they were in the past. State, justice, law, and economy are fully symbiotic with one another—the one unable to function absent the other. This much Smith suggests in *The Wealth of Nations*: “Commerce and manufacturers can seldom flourish long in any state which does not enjoy a regular administration of justice” (Smith, quoted in Rothschild and Sen 2006, 336). It follows then that all redress claims made to the state are claims against the state together with the economy or the effects of the economy within the state. Consequently, to describe the derivative purpose or end of the state or state agency we must attend simultaneously to the mediation of the state and economy together.

The bureaucracy, as with the other essential actors of the state, therefore, does not serve an exclusively statist purpose, it also serves an economic purpose. The mediation of the economy by the state is indeed the highest function of the state in the welfare economy. However, law alone cannot do the mediation of the economy-- there must also be administration. Bureaucracy in this environment overwhelms the legislature in terms of direct impacts on the citizens’ economic welfare.¹²⁰

¹²⁰ The importance of the bureaucratic (executive) connection to the mediation of the economy is demonstrated by the importance of economic well-being for the success of the president (CEO of the executive branch). As head of the executive branch, the president as head of the bureaucracy is partially responsible for the failings of the economy. He endures sanction for failing to marshal the bureaucratic resources necessary to mediate economic shocks. See Rohr (1989).

The foundation of Smith's thought here permeates the remainder of American (and Anglo) thinking on the role of policy, law, and economics and, by extension, administration. Individuals make redress claims to "the state" against the economy. There are three broad types of claims, which incidentally, these conform to the typologies of public policy seen in the contemporary state—distributive, redistributive, and regulatory. Distributive redress claims demand that distribution of resources to given populations as a basic condition of relations in that society. Redistributive claims demand that redistribution of resources to one "have-not" section of the population from the pool of resources "owned" by the section of the population that "has." Both of these forms of policy (codified redress claims) are a demand made upon the state for the provision of equality (of resource or opportunity) for some members of the state. The third type of claim is the regulative, rooted in the provision of equal liberty of persons to do one thing or another free from the possibility that another party will stymie (*a priori* or in *medias res*) their ability to see that thing through. Regulatory redress claims demand "something be done" to stop/ start something from occurring through the application of state-legal coercive force. Each of these redress claims is a request from individuals for use of the state's power—of which their individual autonomous power is a critical part—in the defense of the individual's self-interest defined liberties. The nature of redress claims against the state is that they are appeals to the state for redress against an institution that only the state as aggregate of actors can control—the economy writ large.

The activity of adjudicating these redress claims in the first instance is the task of bureaucratic institutions, as those institutions that have a positive (cooperative and coercive) function for the economy and society at a level where citizens are able to experientially engage with the state. I take as a basic starting point here that citizens, particularly citizens interested in the public good (even as representative of their individual good), cannot know the state or economy without the aid of bureaucracy.

First:

[The subject] born and bred up under the authority of the magistrates... sees they expect his obedience and he sees also the propriety of obeying and the unreasonableness of [dis]obeying... there is the same propriety in submitting to them as to a father, as all of those in authority are either naturally or by the will of the state who lend them their power placed far above you. ... Everyone sees that the magistrates not only support the government in general but the security and independency of each individual, and they see that this security cannot be attained without a regular government. Everyone therefore thinks it most advisable to submit to the established government, tho perhaps he may think that it is not disposed in the best manner possible (Smith, quoted in Long 2006, 293).

There is a process of acculturation of the citizens of the modern welfare state into the idea of the bureaucracy as the visible and experientially verifiable arm of the state. To rephrase, execution, more than legislation, is a state act felt by citizens enough to provoke a genuine response.

Stated otherwise, the bureaucracy serves an epistemological purpose for citizens. To borrow an analogy from Farmer (1995), the bureaucracy serves as the eyeglasses (microscope, telescope) for citizens to see the world around them. The bureaucracy is not the philosopher-king enlightening the world of hapless cave dwellers, nor is the

bureaucracy a Vanguard party of the technocratic revolution.¹²¹ Bureaucracy is a proximate tool through which citizens may sense, in a more full way, the systemic structure of the state, society, and economy (Mladenka 1977, Peterson 1986). In the original state, the lines of the complex interplay between the structures blur in the unaided view of the citizen.

To elaborate, citizens are limited in their ability to apprehend the system around them, blinded by the vagaries of uncritically applied group politics, non-public spirited versions of self-interest, hyper-specialization of one's productive capacity leading to non-reflexive dependence, and nefarious inter-firm economic competition. As nearsighted individuals, they are unable to apprehend the value of the system that guides the structure they may legitimately wish to change. Alternatively, in a more pragmatic reading, they are unable to interact reflexively with the symbols of the state. As the law and the coercive power of the law is applied, citizens alienated from the process of legitimation are cut off from the possibility of engaging the symbolic language of the state as actors who can reflect back to the other those characteristics of the symbols themselves. As citizens are unable to visualize the fullness of the system—of the morality of the invisible hand itself--- little recourse remains for them to provoke meaningful changes.

The first step in a citizens' effecting a change is to see the full structure of the system before the state. In the complex modern welfare state, this requires an aid—

¹²¹ As those in the mood of anti-bureaucracy may be wont to suggest.

guidance—a Virgil to the citizen Dante.¹²² As the office of the bureaucrat is the only office fully involved in the lives of citizens and the one more responsively attuned to citizens, the access of citizens to change must come from the bureaucracy. This is not to imply that bureaucrats have exclusive access to the superstructure of the state or that citizens are a muddling proletariat, but that the bureaucracy and citizens are closer to one another, if not the same in many cases. As described earlier, the bureaucracy is the mediating institution between ordinary citizens and the constitutional state.

Consequently, the full force of the bureaucracy is in its status as citizen's aid. It is through cooperative or even contested encounters with the language and process expectations of satisfying redress claims through the bureaucracy that citizens can come to terms with the state- economy in its full complexity.

¹²² Dante's encounter with Virgil in the first Canto of the *Inferno* is illustrative for my understanding of the citizen's encounter with bureaucracy. As Dante first fears the appearance of Virgil, he awakens to the realization of what he himself owes to Virgil's writings. Virgil invites Dante to follow him through the *Inferno* so that he receives deliverance to the higher soul on the opposite side of hell who may bring Dante to the light of God. It would be partially blasphemous to compare the average legislator or legislature to God, but the illustrative device I think serves a purpose here. To quote (in Italian):
 Mentre chi' rovinava in basso loco, dinanzi a li occhi mi si fu offerto chi per lungo silenzio parea fioco. Quando vidi costui nel gran deserto, 'Miserere di me' gridi a lui, 'qual che tu sii, od ombra od omo certo!' Rispuosemi: 'non omo, mom già fui... Poeta fui, e cantai di quell giusto figliuol d' Anchise che venne di Troia poi che 'l superbo Ilión fo combusto. Ma tu perché ritorni a tanta noia? Perché nn Sali il diletto so monte ch'è principio e cagion di tutta gioia? "Or se' tu quell Virgilio q quella fonte che spandi di parlar si larg fiume?" rispuos' io lui con vergognosa fronte. "O de lie altri poeticonore e lume, vagliani 'l lunngo studio e 'l grande amore che m'ha fatto cercar lo tuo volume. Tu se' lo nio maestro e 'l mio autore... Ond'io pre lo tuo me' pense e discerno che to mi segui, e io saró tua guida, e trarrotti di qui per loco eterno... A le quai poi se tu vorraisalire, anima fia a ciò piú de me degna: con lei ti lasceró nel mio partire' ché quello imperador che lá sú regna, perch'I fu' ribellante a la sua legge, non vuol che'n sua città per me si vegna. (Alligheri 1980, 5-9)

Language, Law and the Expectations of Bureaucracy

Citizens have a wealth of expectations of the bureaucracy (Kettl 2002). Many of these expectations can be realized, some not.¹²³ Fully parsing the “average citizens” expectations of bureaucracy is beyond the present scope, but I offer that there are particular typologies of expectations, directed through the language of government, that characterize citizens’ desires of the bureaucracy as institution.

The effect of bureaucracy upon language is most important to, yet distant from, ordinary considerations of the bureaucracy. The language of politics is the language of law, constitution, legislative compromise, justice, and morality, all of which are input statements into the language of the state as “policy”. Likewise, the language of bureaucracy is that of the law, constitution, justice, and morality. How we speak of politics is the product of how we have come to speak about our encounter with these terms through the implementation of policy designed in their scope. Enmeshed in our understanding of bureaucracy are our encounters with it and the subsequent interpretation and internalizations of these encounters through sense-language-interpretation. Each of these terms is critical for definitions of the language of bureaucracy. We encounter the bureaucracy linguistically—through speech and action predefined by speech. Therefore, I start from the premise that we understand bureaucracy hermeneutically.

¹²³ It is first necessary to assert an obvious point—the expectations that citizens have of government are couched in terms of process expectations. Process expectations direct us to how to act in a given role. The expectations that government has of citizens are couched in the language of law. Briefly, expectations are normatively loaded statements of ideal types, designed to imply that things “ought” to be other than how they “are.”

Bureaucracy, through speech, provides the immediate experience of citizens with the language—the symbols in pragmatic terms-- of government. Through bureaucracy and citizen interaction, this language “leaks” into the general vocabulary that citizens use to describe their daily encounters of life. Indeed, for examples of this we need look no further than the utilization of the term bureaucracy to denote symbolically particular conditions of constrained action. This cooperatively generated vocabulary becomes the specialized language that citizens employ to discuss—both within citizen only groups and in citizen-bureaucrat groups--the state and the effect of the state upon the economy.

A number of continental theorists of language and society, including Gadamer (1997), Heidegger (1996), and on the American side, the pragmatist Dewey (1910, 1935, 1948), analyzed the nature of a cooperatively generated vocabulary for joint action. To summarize very briefly, when acting, internal dialogues foreshadow and describe our actions before we act. Actions are always already sentences in our minds well before they take on material form. Speech expects and anticipates action. Our actions mediate the interaction of symbols within ourselves in anticipation of the reactions of others. In the situation of bureaucrat-citizen interaction, speech mediates the actions of both bureaucrat and citizen beforehand. Language, particularly the reflexive use of language, structures communicative interaction and conjoint action.

The influence of expectations on the bureaucracy and bureaucratic-citizen interaction leads to the transformation of the language of public action. Expectations are captured in the reflexive moment of language, which itself directs and is directed by the expectations and anticipation of action on the part of citizens and bureaucrats. To

explicate on this further, it is necessary to revisit two major theses of being and language that underpin much of the critical theories of language in the world as we know it today (Balfour and Mesaros 1994). Specifically, I revisit the idea of the hermeneutic circle and the idea of communication through text.¹²⁴

The notion of the hermeneutic circle comes from the seminal work of Heidegger, *Being and Time (Sein und Zeit, 1996)*.¹²⁵

In every understanding of world, existence is also understood and vice versa. Furthermore, *every interpretation operates within the fore-structure which we characterized. Every interpretation which is to contribute some understanding must already have understood what it is to be interpreted....* But if interpretation always already has to operate within what it understood and nurture itself from this, how should it then produce scientific results without going in a circle, especially when the presupposed understanding still operates in the common knowledge of human being and world? The fulfillment of the fundamental conditions of possible interpretation rather lies in not mistaking interpretation beforehand with regard to the essential conditions of its being done. What is decisive is not to get out of the circle but to get in it in the right way. This circle of understanding is not a circle in which any random kind of knowledge operates, but it is rather the expression of the existential fore-structure of Da-sein itself.... The ‘circle’ in understanding belongs to the structure of meaning, and this phenomenon is rooted in the existential constitution of Da-sein, in interpretive understanding (1996, 152-153).¹²⁶

¹²⁴ Both of these terms have become part of a lexicon that is largely over-commodified in intellectual circles rendered blunt instruments for examining social interactions. The result has been that public administration theory has had little space for these types of critiques as generally done, thus I attempt to do it in a slightly different fashion here.

¹²⁵ *Being and Time* is an efficient translation, but does not fully capture Heidegger’s purpose or the complexity that he has incorporated into the terms *sein* or *zeit*. However, an exegesis on Heidegger is not the purpose here, so these translations will stand as sufficient. I argue that the same assertions hold for Gadamer’s *Wahrheit und Methode (Truth and Method)*, yet, as this is not an exegesis on Gadamer, I avoid any further elaboration. The tradition of modern political theory includes significant attention paid to both thinkers and it would be a new project to attempt a catalogue here. See however, Dallmayr (1993) on Heidegger and Gadamer both.

¹²⁶ Da-sein is often translated as “being in the world” or how we ontologically can know our selves through an understanding of what it means to “be”, to “be-in” and to “be in reference to” one another and to ourselves simultaneously. “Da-sein is a being which is related understandingly in its being toward that being. In saying this, we are calling attention to the formal concept of existence. Da-sein exists. Furthermore, Da-sein as the condition of the possibility of authenticity and inauthenticity. Da-sein exists always in one of these modes or else in the modal indifference to them. These determinations of being Da-sein, we see and understand *a priori* as grounded upon that constitution of being which we call *being-*

The complexity of the hermeneutic circle as a way of being for the definition of individual ontology can be somewhat simplified for the present purpose.¹²⁷

The hermeneutic circle can be defined in the following way: we achieve our understanding through the circular path of our encounter with the world as we sense it. The steps of the hermeneutic circle are: 1) we sense the world, 2) we understand the world through the use of whichever language symbolic we have acquired through being in the world, 3) in order to interpret the world, 4) so that we may understand the world as interpreted through our senses and language, 5) so that we may know that what we see is “real” and that we can draw patterned judgments about reality existing in a similar way in the future, 6) so that we can recognize that we have an existence relatively defined in the world and 7) can prime our senses to take in the world.

It is through being in this circle that we come to appreciate not only ourselves in the world but also those objects against which we define our concrete being (Heidegger 1996).

Any attempt to think philosophically or scientifically about our experiences is an attempt to deepen our understanding of future patterns of being. Another way to view the process of understanding rendered through a hermeneutical encounter with the world comes from the unlikely source of Adam Smith. The hermeneutic circle is the synthesis

in-the-world. The correct point of departure for the analytic Da-sein consists in the interpretation of this constitution. The compound expression “being-in-the-world” indicates, in the very way we have coined it, that it stands for a *unified* phenomenon. This primary datum we see as a whole (Heidegger 1996, 49).

¹²⁷ Scholars of Gadamer may be disappointed with the brevity of the examination of Gadamer’s theory of language; however, this is not the arena to offer a more thoroughgoing analysis.

of theoretical and practical imagination, the synthesis of our intellectual and practical beings.

It is through the practical imagination that we ascribe actions to persons and see persons, including ourselves, as coherent or identical over time. In other words, the practical imagination creates the moral world.... The theoretical imagination is... the foundation for all the arts and sciences. It accounts for our ability to bring order and system in things and event around us so we can orient ourselves in life (Haakonssen 2006, 10).

Generated through this is what Smith calls sympathy—a concept not unlike the fusion of horizons or the synthesis of individually decentered prejudiced views of the world.¹²⁸

Sympathy is characterized as an act of the imagination because we do not have access to another persons' mind. What we have access to is the other person's observable circumstances, including his or her behavior. The act of sympathetic understanding is a creation of order in the observer's perceptions by means of an imagined rationale for the observed behavior. As agents or moral beings, other being are, therefore, the creation of our imagination. ... The same can be said of ourselves; as moral agents, we are acts of creative imagination. The central point is that we only become aware of ourselves—gain self-consciousness—through our relationship with others. ... Our imagination craves order in these actual or potential conflicts and that means a workable level of agreement about personal relations and things, as in questions of who is to lead and who is to own or have the use of what. Our understanding of how others see us in these circumstances determines our view of who we are and how we stand in such relationships in life.... In other words, one only learns to see oneself as a person and as a member of a moral universe of agents through sympathy with others view of one's identity and situation in the world. Society is, as Smith says, the mirror in which one catches sight of oneself, morally speaking (Haakonssen 2006, 12-13).

¹²⁸ “In fact the horizon of the present is continually in the process of being formed because we are continually having to test all our prejudices. An important part of this testing occurs in encountering the past and in understanding the tradition from which we come. Hence, the horizon of the present cannot be formed without the past. There is no more an isolated horizon of the present itself than there are historical horizons which have to be acquired. *Rather, understanding is always the fusion of these horizons supposedly existing by themselves.* We are familiar with the power of this kind of fusion chiefly from earlier times... In a tradition this process of fusion is continually going on, for there old and new are always combining into something of value, without either being explicitly foregrounded from the other” (1997, 306). A basic assumption of the use of the hermeneutical technique is that there can be fusion of perspectives across time (as Gadamer directly suggests) and across space.

It is also through this circle—this fusion of imaginatively sympathetic horizons-- that we begin to form our prejudices, or our ideal typical expectations of how things are, which later guide our experience of the world and our accumulation of further knowledge. I refer here is what Gadamer describes as prejudices. In short, Gadamerian prejudices are normatively valid claims of what we prefer “is” in the context of our own interpretation of our present surroundings. These prejudices, captured in symbolic-linguistic form, are sentences describing our ideal type preferences. These preferences/prejudices provide us with reference points for comparison of what is and what satisfies us. These preferences provide us with a framework in which we can make individually valid claims to do something this way or that in a logically coherent framework.

The recognition that all understanding inevitably involves some prejudice gives the hermeneutical problem its real thrust... Actually, ‘prejudice’ means a judgment that is rendered before all the elements that determine a situation have been finally examined. In German legal terminology, a ‘prejudice’ is a provisional legal verdict before the final verdict is reached. ... the French *préjudice*, as well as the Latin *praejudicium*, means simply ‘adverse effect’, ‘disadvantage’, ‘harm’. But this negative sense is only derivative. The negative consequence depends precisely on the positive validity, the value of the provisional decision as a prejudgment, like that of any precedent. Thus ‘prejudice’ certainly does not necessarily mean a false judgment, but part of the idea is that it can have either a positive or negative value (Gadamer 1997, 270).

Prejudices are provisional normative claims that we make upon the symbols that organize our perceptions of our being and that of others, which foreground our attempts to make sense of the world in its full form. Our prejudices, though quite possibly “felt” more than “verbalized”, have the character of normative validity claims and therefore are part of the formative basis of discursively ethical communicative action. Normative

validity claims, like prejudices, arise within our sentences for describing the world in discursively useful terms.

We have, then, a confirmation of what we stated above, namely that in language the world itself presents itself. Verbal experience of the world is ‘absolute’. It transcends all the relative ways being is posited because it embraces all being-in-itself, in whatever relationships (relativities) it appears. Our verbal experience of the world is prior to everything that is recognized and addressed as existing. That language and world are related in a fundamental way does not mean, then, that world becomes the object of language. Rather, the object of knowledge and statements is always already enclosed within the world horizon of language (Gadamer 1997, 450).

That we can know linguistically, through communicative instruments with intersubjective validity, the bureaucracy allows us a way to “deal with it” that is more than merely emotional. We “deal with” bureaucracy linguistically through the enforcement of our expectations—formed from the synthesis of prejudiced horizons—upon our encounters with the bureaucracy. How we know the bureaucracy defines who we are as citizens. The encapsulation of understanding within the single individual who is a participant in both hermeneutic development of understanding and communicative action in a public sphere allows for the conditions of communication among diverse (differentiated) individuals necessary for political goods such as legitimacy or representation to come about. The generation of socially mediated individual knowledge and prejudice, will, as it interacts with the social that is the bureaucratic environment marked by instrumental rationality, eventually coincide or overlap with homogenizing rational orientations (in this case Weberian or Taylorite expectations of bureaucratic processes), which are necessary for the legitimation of bureaucratic actions.

We know the value of our expectations through rational reflection upon these claims, an action that requires a formal world of communication between individuals that are subject-centered persons.

Differentiation, reflexivity and the cultural rationalization accompanying them are... necessary conditions for an emancipated society. 'The more cultural traditions predecide which validity claims, when, where, for what, from whom, and to whom must be accepted, the less the participants themselves have the possibility of making explicit and examining the potential grounds on which their yes/no positions are based.' Cultural rationalization, however, is not a sufficient condition for emancipation. Participants in rational communication processes must decide what they regard as the good life (Love 1989, 274-5).

In the case of bureaucracy's role in cultural rationalization, our understanding of bureaucracy envelops our common sensation of it. The interpretation of that sensation through a linguistic media (expectations coded into sentences) provides the basis of communication of this knowledge in discourse. Expectations are made and remade by our voicing of our individual and mutual dissatisfaction with the (none) conformance of bureaucratic behavior with our expectations.

Expectations of Bureaucracy: Function and Structure

Expectations of bureaucracy include expectations of how bureaucracies in general will appear and how they will act. We expect the bureaucratic office to not only look and "feel" a particular way, but that it will "behave" in a certain consistent manner. These expectations, again, are a product of hermeneutically derived, communicatively accumulated, experiences. Citizen's satisfaction with the bureaucratic experience – a key component to the utilization of bureaucracy as a legitimately representative

channel—we can measure as the conformance of bureaucratic actions with citizens’ prejudices and expectations. Expectations of the bureaucracy are beliefs about the way that bureaucratic actors work and how bureaucratic mediation occurs. Our expectations, captured in the language produced through our hermeneutical encounter with bureaucracy, have both structural and functional consequences for the shape of the bureaucracy within the public interest generating public sphere.

The ideas of the bureaucracy and the public sphere impart an idea of structured space. By structured space, I mean the places—physical edifices, park boundaries, offices—that we can call public, meaning open without legal or procedural constraints to inquiry to all persons who wish to do some form of “business” pertaining to their private or commonly-held-with-others interests. Public spaces allow an individual to freely move about, into out of, or through, in their interest seeking. Likewise, we encounter fully public spaces as sources of freely available goods and services and information. Semi-public spaces have the quality of freedom of entry and traverse, yet may be restrictive of to the behavior that individuals can exhibit within them. An example of this is the expectation of payment. Those places often called public, such as public transportation in a metro-system, are public only in a limited sense—there is no complete access to all services entailed in the idea of public transportation. That is, for full service, one must forfeit a quality of their private selves—a degree of their private wealth—for the benefit of the service. Therefore, there are, in a sense, no fully public

“agonistic” spaces available for public discussion.¹²⁹ By agonistic space, I mean a space where all interpretive possibilities for communicating ones interests are open and unrestricted by anything other than personal resources available at the time.

In the modern state, there is no fully public space. Spaces, for a number of reasons, are restricted according to access, utilization, behavior, and so on. Non-restricted spaces are indeed rare, although the ideal public library may come close to representing a fully public space.¹³⁰ Public spaces in the modern welfare state are only semi-public—there exist restrictions to entry, barriers to behavior, and economic barriers to full unfettered access. A few examples may suffice to make this clear—the courthouse is fully public, except to a person intent on bringing weapons into the facility without prior permission or a homeless person seeking shelter for an extended period. The public hospital (and in cases of emergency, any hospital) is public, except one cannot enter with weapons and anyone entering for a service must agree to the terms that payment or proof of indigence is required for service. Most university grounds are open to agonistic types of protest, but only in certain locations and with appropriate permissions/ permits granted first.¹³¹ These “open” spaces are not open to full agonistic discourse. No edifice with fully open doors and fully open dialogue—to evoke a

¹²⁹ An agonistic space is one that is radically open to all comers, goers, and interlopers who may use the space in whichever way they deem fit for the moment. However, theorists such as Mouffe (2000) may laud the forum as an agonistic space, her use of the term folds in on itself when we consider the history of the forum as space with marked restrictions on access for all parties.

¹³⁰ Though the rules of access to public libraries have changes, the ideal public borrowing library does not restrict access to the main function of the library—reading or learning—according to ability to pay. However, it does request conformance to particular behavior standards.

¹³¹ There is much concern on the matter of the closing of university spaces for performance and debate. As universities find themselves liable for the behavior of those persons on their grounds, the open space of the university will become more and more limited. The space for free love and free debate in the 21st century university campus is now closed.

common term of public sphere theory—presently exists. All public space is mediated space.

Though an intriguing problem, it is not the characteristics of the *edifice* of the public sphere that will concern me for the remainder of this section I am most concerned with the actions of the actors in the public sphere.¹³² Architecture and public architectural pieces are mutable and contingent in their social and political importance (Goodsell 1977, 1988, 1994, 1997). In terms of their public role, places transform from public to semi-public to private as ownership or stewardship changes hands. Moreover, as these places transform through the interaction of state and economy, our interaction with them and within them also adapts to suit. In all of the public spaces mentioned above, it is the task of actors of the state—bureaucrats or public administrators—to mediate the space. This mediation is often no more than “doing one’s job,” but bureaucratic employment is, in many unremarkable cases, an act of policing and mediating in the open on behalf of the public.¹³³ The mediated public space, those spaces described above, but also include schools, roads, or downtown sidewalks, can also be described as bureaucratic or bureaucratized spaces. However, we should not interpret this through the pejorative sense of the symbol bureaucratic—bureaucrats as

¹³² Most theorists of the public sphere, Habermas included, would find the notion of an edified public sphere unusual. As conceived, it is the space of conversations, in Habermas’ terms, those conversations in the emerging critical media of the 18th century. To the extent that the public sphere has an edifice is to the extent that a newspaper or a pamphlet has an edifice. To architecturalize the public sphere is to architecturalize text. Texts wrap our lives in words in such a way that words do become real in the sense of a building. That we can use the word “bureaucracy” to indicate a set of behaviors and a place is suggestive in this regard.

¹³³ One is lead to think perhaps of the very political role of the local bureaucrat operating as school principal.

independent or invidious police agents do not mediate bureaucratic spaces. It is on behalf of and *by* citizens' expectations of the space that bureaucratic, semi-public spaces adapt. Firstly this is done through the embodiment of citizens interests in public policies made in a representative system and, secondly through the representation of citizens interests through the citizen-bureaucrat. Mediation occurs through the reflexive interchange between citizens seeking conformance of bureaucrats with their expectations and bureaucrats seeking to serve citizens. Our expectations as citizens color the way in which bureaucracies are structured and how they will function. Similarly, our expectations of government shape our interaction with it.¹³⁴ These expectations are neither fixed nor concretely knowable as law-like; these expectations are the mutable product of communication among decentered individual subjects whose own hermeneutical interaction with the world generates a reflexive product on multiple levels.

In America, for reasons of history, these expectations are inclusive of a rational, economized, and "scientific" paradigm.¹³⁵ This much can be seen in the rise of the

¹³⁴ Peters makes this much clear in *The Politics of Bureaucracy*: "... just as the child learns the prevailing norms concerning economic behavior, social interaction, and child rearing, he or she also learns how to understand and evaluate politics and government. This process of learning political values and political culture is referred to as political socialization. ... The social and economic systems of a country place boundaries on the actions of government, and more specifically public administration. Political culture is equally important to setting boundaries, although the boundaries are less tangible than those determined by economic conditions. By defining what in government is good and bad, the culture may virtually mandate some actions and prohibit others" (2001, 38). Peters does not offer a reflexive approach, but given the theory of social communication elaborated throughout this work, I take it as given that this works in reverse as well.

¹³⁵ The shaping of the American concept of the state as a product of the historical evolution of political theories has been examined elsewhere by theorists such as: Frost and Sikkenga (2003), Davis (1995) and Frisch and Stevens (1971). Attention to the administrative aspects of this we find in the works of Rohr (1986, 1989, 1995, and 2002). I will not elaborate further on this but acknowledge the importance of the work in this field for the remainder of what I say here.

administrative state as subject of concern for scholars of scientific management.¹³⁶

Indeed, there have been numerous commissions and reports touting a scientific or more rational version of bureaucratic reform capable of “reigning in” or making more efficient the public bureaucracy (Kim and Wolff 1994).

The current idea of reinventing government is the latest of eleven major reform initiatives to make the federal government work better since Theodore Roosevelt; these include the Keep Commission (1905-1909), the Taft Commission (1910-1913), the Joint Committee on Reorganization (1921-1924), the Brownlow Committee (1936-1937), the first Hoover Commission (1947-1949), the second Hoover Commission (1953-1955), Study Commissions on Reorganization (1963-1968), the Ash Council (1969-1971), the Carter Reorganization Review (1977-1979), the Grace Commission (1982-1984), and the 1993 National Performance Review. All began with an assumption that government as typified by the federal government was badly organized and incapable of performing at the level acceptable to the public (1994, 73-74).

Certainly, the emphasis of the current (Bush) administration on performance budgeting (a program of program assessment piloted in 2002 and begun formally in 2003, administered by the Office of Management and Budget) should be included in this litany of rationalization efforts. That the federal bureaucracy has been directly studied for its efficiency (and, by extension of economic logic, goodness) for 30 out of 105 years is suggestive of a pattern of practices within the government that have a cultural impact upon citizens’ appreciation (apprehension) of the bureaucracy.¹³⁷ As a product of the

¹³⁶ See Hood 2005.

¹³⁷ The role of the media (particularly if we define media coverage as a type of artistic performance) vis-à-vis bureaucracy is to promote heteronomous condition in viewers. In particular, the performance of media players in the coverage of the recent FEMA incidents was not merely to perform an act of artistry or an act of informing. Rather, the role of media was to “bait” the viewer with particular value judgments embedded in broadcasts in order to promote additional viewership. The effect was a pronounced negative attitude towards FEMA as a whole.

evolution of media based campaign technology as well as instantaneous and continuous news, citizen expectations of the bureaucracy changed.

The expectations of citizens exhibit two loosely differentiated groups, functional and structural. Functional expectations refer to expectations of outputs anticipated by citizens. The function of bureaucracy is to produce goods or services (including the provision of information and control) to and for the public. To the extent that information is believable, goods and services are appropriate to the organization and are satisfactory in terms of quality relative to private goods, we can point to the satisfaction of functional expectations. Structural expectations refer to the expected manner of output generation. Structure and function cannot be decoupled. The structural expectations of bureaucracy include anticipations of who is responsible for what and who is accountable to whom. Structural expectations of bureaucracy are those expectations of hierarchy, division of labor, expertise, and management.

These terms are, not coincidentally, economic terms; structural expectations of good and service providers in America arise out of the provision of such things in the private sector. For example, economic models of bureaucracy expounded upon by Tullock (2005) and other social choice theorists, as well as modified social-choice theories, such as those embedded in the propositions of Downs (1967), Osbourne and Gaebler (1992) and later, public management scholars such as Lynn, Heinrich, and Hill (2001), espouse a particularly economic model of the structure of bureaucracy. The economic structure proposed—of inter and intra firm competition, self-interest and rent-seeking, and provision of services to customers—is designed to impart into the

bureaucracy a version of good that is economized. In most instances, this is economic efficiency, or the maximization of profit and minimization of costs.¹³⁸

The expectations that citizens have of the bureaucracy do more than shape the way that bureaucratic officials respond to our claims, they shape our expectations of democratic governance and our experience of the public sphere. As I have elaborated upon earlier, there exists no fully public space in the modern welfare state that we could describe fully outside of mediation by bureaucratic action. The mediating effect/mediating action of expectations are simultaneously the conformity of public space mediation by bureaucrats to such expectations and the acceptance of the performance of such actions by the citizenry. As a confluence of structures, bureaucratic language and action form the borders for acceptable actions within the public at all. Our experience of the world conforms to the synthesis of our present expectations of the structure and function of the state system and the consequences of reactivity between that system and us.

Bureaucracy and the Mediation of the Public Sphere

We must view the complexity of the synthesis of our expectations through both speech and action. However, as speech and action interconnect in the public sphere and the generation of its logical product—the public interest—it is essential to focus on the confluence of the two in the idea of the bureaucratized public sphere. The public sphere

¹³⁸ The work on public management by Lynn Heinrich and Hill (2001) employs an explicitly economic view of public service provision. This is representative of the public management paradigm in general (See Hood 2005).

is an arena of open communicative discourse among free subjects who, through making valid, rational claims for state action, serve as the legitimately sovereign formative force for the goals of the state, and by extension the goals of the economy. The public sphere as an arena of both speech and action by communicating partners is not open in the Foucauldian, fully agonistic sense.¹³⁹

The first sense in which the public sphere mediates communication is through expectations of reason and rationality. Rationality forms the bedrock of power used as force for mediation in Habermas' public sphere theory. However, in the world of governance, where bureaucracy is the ultimate organ of state and economic rationalization, the bureaucracy truly mediates the public sphere through its adaptation and reflection of economically rational expectations. This combined effect of reflexive reciprocity results in greater porous-ness of the boundaries between citizens, bureaucracy, institutions of "political principals," and the public sphere of which all are part. The reflexivity of expectations and performance, speech and action, citizen as clients and citizen as co-productive partner renders the problem of "fuzzy boundaries"

¹³⁹ See for example, Love 1989, 280-218 on the Foucauldian interpretation of the constraints of discourse that invariably arise. "In volume one of *The History of Sexuality*, Foucault describes western man as the 'confessing animal'. Confession, he argues, is the characteristic discourse of reflexive subjects, a discourse in which subjects discuss themselves. A confession produces truth in two senses. First, individuals must confess the truth about themselves. Foucault argues that our Christian heritage, now secularized, requires individuals to reveal their desires as well as their transgressions in discourse. He says that 'we are forced to produce the truth of power that our society demands, of which it has need, in order to function: we must speak the truth; we are constrained or condemned to confess or to discover the truth.' Second, this discourse itself aims at truth. In confession, we submit our true desires for examination and evaluation to determine whether they are true, whether they conform to accepted and/or acceptable norms. 'In the end, we are judged, condemned, classified, and determined in our undertakings, destined to a certain mode of living or dying, as a function of the true discourse which are the bearers of specific effects of power.' Discourse not only judges desires but administers them.... He concludes that the multiplication of discourse involves an intensification of interventions of power. When subjects know and control themselves, they are also known and controlled."

more complex than suggested by models of institutional interaction based on clear separation of powers, or fully rational actors, or democracies of public and private actors.

Kettl suggests that the fuzzy boundary problem is the result of a confluence of historical factors and theoretical models that are inefficient predictors of reality. The historical factors he traces to the competition between Jeffersonian, Madisonian, Hamiltonian, and Wilsonian traditions of politics/ administrative design.

At the core of this [competing tradition] issues lies the fuzzy boundary problem. Each of the four traditions grew from efforts to draw lines defining the roles and responsibilities of each of the players. The transformation of governance, in each case, blurred those historic boundaries... That, in turn, framed the central problem of American public administration. Administration, in general is about defining the nature of work; breaking work down into its component pieces; developing expertise for managing each of those pieces; and matching expertise to the job to be done. Administration is about devising and honing routines to accomplish complex tasks. That requires fixing responsibilities as drawing boundaries. ... Administration has always struggled to create and manage the boundaries that contain it (Kettl 2002, 74-75).

The struggle to define and maintain administrative boundaries is a problem of mutual sensation, understanding, interpretation, and reinterpretation. The mutuality of the process of administrative creation renders efforts to establish clearly the bounds of administration a fundamentally hermeneutical problem.

In the process of administrative creation, we are attempting to synthesize the past (constitutional, foundational traditions), the present (adaptations of citizens' roles as service seekers, co-producers, sovereigns and funding agents (Kettl 2002, 70-73), and the expectations of the future of a number of individually decentered subject authors,

each positing a solution or expectation deriving valid normative weight from their prejudices (the interaction of self and tradition culminating in a 'being in the world').

This occurs simultaneous to the striving for a fusion of horizons in limited institutionally mediated discourse contexts and the larger democratic discourse context. The struggle to define administration in the present is a formative process that is on going:

In fact, the horizon of the present is continually in the process of being formed because we are continually having to test all our prejudices. An important part of this testing occurs in encountering the past and in understanding the tradition from which we come. Hence, the horizon of the present cannot be formed without the past. There is nor more an isolated horizon of the present in itself than there are historical horizons which have to be acquired. Rather, understanding is always the fusion of these horizons supposedly existing by themselves. We are familiar with the power of this kind of fusion chiefly from earlier times and their naïveté about themselves and their heritage. In a tradition this process of fusion is continually going on, for there old and new are always combining into something of living value, without either being explicitly foregrounded from the other (Gadamer 1997, 306).

The lingering problem of border-establishment in the administrative tradition is the fusing of fuzzy horizons into concrete boundaries in a web of interpenetrating traditions.

This hermeneutically derived fuzzy boundary problem remains a problem in administrative thought. The solution to the problem involves re-centering the political selves of citizens and bureaucrats and political principals back into a single perspective of citizen sovereign in the bureaucratized public sphere. This requires, to evoke Frederickson (1997) —not a reinvention of government but a reinvention of the way we think about governance. “George Frederickson has contended that genuine reinvention of government that focuses only on reinventing the administrative process will fail. He argues for ‘total quality politics’ to supplement ‘total quality management’” (Kettl 2002,

72). The total quality of politics reinvented entails remaking the notion of bureaucracy (management) into a political concept with a representative task. The reinvention of government is more than a reinvigoration of reinvented management of public political agencies. It involves rethinking the direction of citizen sovereignty as one that comports more closely with the idea of the public sphere as the sum of public interest generating institutions, institutions of public interest implementation, and the critical reflective process of citizens' critiques of each.

I have already posited that we must examine the process expectations/ language of bureaucracy as hermeneutically involved in a reflexive generation process. I now return to the idea of bureaucratic space in order to expand further on the idea of administrative boundaries and the public sphere. The citizens' imagination of and encounter with politics today involves either a minimalist legislative centered scheme of democratic government (voting *à la* Schumpeter (1942) or Bobbio (1989), see Held 1996) or an expanded customer service centered scheme (as propounded in Total Quality Management rhetoric, for example (Zbaracki 1998)). As with many things, the truth lies somewhere between the two models.

The "golden mean" of citizen politics entails the idea of citizens as sovereign co-producers of a state that they themselves want as the producers of their welfare. The first step to realizing this is the reconfiguration of previously closed bureaucratic-political space as citizen-administrative space (*pace* the deliberative democrats, though I will attend more fully to the deliberative requirements of this in the next chapter). To do this, we must revisit the idea of bureaucratic employees as citizen administrators and

consequently, bureaucratic space as citizen administrative space. To paraphrase from Wamsley et. al. (1989), we must re-invoke the “agency” perspective.

Citizen administrative space is the space in which a public administrator, invested heavily in his/her citizen role, brings to bear the idea of citizens’ values on decision-making. Cooper emphasizes the extensive role of the citizen in his definition of the citizen administrator:

Public administrators and scholars of public administration should begin their redefinition of the public administrative role from an understanding of citizenship because that is where the clarification of the role in a democratic society leads. The source of their authority is the citizenry. Public administrators are employed to exercise that authority on their behalf. They do so as one of the citizenry; they can never divest themselves of their own status as members of the political community with obligations for its well-being. A search for a redefined public administrative role requires an exploration of what it means to be a citizen administrator (145). The administrator of the public’s business is not primarily a technician, not most essentially a specialist in some policy arena, nor simply an employee of a public organization; the most fundamental role of the public administrator is that of citizen. Public administrators are best understood as citizen administrators. (Cooper 1991, 139).

This revised and expanded theory of bureaucratic citizenship, and therefore of citizenship in general, requires that we reconceptualize the space of citizenship practices. Other scholars of public administration, notably Wamsley, et al. (1989) have conceptualized this space as the agency. These citizen administrators operate in an agency space that stands for the rights of citizens to exercise their rights as members of the common will, not in the space normally posited by theorists promoting an economizing function for bureaucracy.

In order for public administrators to be viewed as legitimate agents, the Agency must stand for: 1) the broadest possible definition of the public interest derivable from its statutory mandate, requirements for fiduciary responsibility, and

consistent with the Constitution; and 2) a sincere search for a consensus on the 'common good' within the realm of the substantive policy concerns that fall within the agency's ambit. It must not only satisfy or balance the most powerful interests impinging upon it as any successful institution would, but it also must seek to represent the unspoken interests of unwitting stakeholders and thus to invoke a higher common good. The agency thus must act as an agent for those citizens not present and indeed serve as the agent-trustee for all citizens... (Wamsley, et. l. 1989, 117).

To recapitulate on a position developed in an earlier section of this chapter "... theories of citizenship should be based on exploration of the sometimes contentious, sometimes cooperative, sometimes legitimate dyadic relationship, between the state and the capitalistic economy" (Somers 1993, 588). The theory of citizenship in this rethought state must be one that takes the public sphere as all public spaces, in many cases including spaces such as the Agency, as legitimate arenas for critical dialogue on the state and its functions. The expanded definition of the public sphere, then, "... denotes a contested participatory site in which actors with overlapping identities as legal subjects, citizens, economic actors and family and community members, form a public body and engage in negotiations and contestations over political and social life" (Somers 1993, 589). This involves remaking the activities of citizenship as an institutionalized form.

As the mediating actor between society, economy, and state, public agencies always already permeate those arenas of the public sphere described above. That is, institutions of immigration define and affirm citizenship through what Wamsley calls the Agency. To go further into the intimacies of the state, the family is housed in a space made safe by bureaucratic actions and, in some cases, is housed through the bureaucratic

affirmation of a particular status vis-à-vis state definitions of class and desert. Each of these arenas described form an area of “contestation over political and social life” in which bureaucracy plays an integral role for those persons—stakeholders and communicative partners—involved.

Some areas of the bureaucratic or agency space, however, are more directly contested than others. Some areas are open to direct citizen appeal, while others remain contestable. Those indirectly contested areas are those that are most important for a full theory of citizenship in the bureaucratic state. Specifically of concern are those areas that Kettl describes as between bureaucratic layers or between bureaucratic offices themselves. While citizens are typically understood to be external partners to bureaucracy—kept out of internal spaces by occupational qualifications—they can also be seen as agents operating within these layers under the revised definition of bureaucrats as citizen administrators.

When the ‘government bureaucracy’ interacts with its external partners ... it is not just a monolithic entity. The ‘bureaucracy’ is really composed of different individuals at different levels with different instincts and goals. These officials interact, in turn with counterparts with other officials in other bureaucracies who share similar characteristics. Officials at different levels tend to behave differently; as the interact with other officials at different levels in different bureaucracies, problems in communication, performance and accountability arise. ... failure to bridge the boundaries between levels can create tenuous breakdowns, chronic performance problems, political embarrassments, and, sometimes, great tragedies (Kettl 2002, 65).

These between bureaucratic spaces, previously regarded as internal only and beyond citizen reach, become citizen spaces in the agency-- bureaucratized public sphere. As citizen administrators, bureaucrats (even those devoted exclusively to

internal relations between and within the agencies) bring to bear their citizen capacities and horizons into these spaces. Each of their understandings, interpretations, languages, and prejudices come into this rethought space. That is, citizens as bureaucrats bring into the space their hermeneutically defined selves when entering the doors of upper level or internal workings of the bureaucracy; the impulse of tradition (*Bildung*) permeates these spaces as well. Citizens occupy these spaces indirectly, but occupy them nevertheless. Rendering these spaces directly available for citizen consumption would be problematic in a welfare state marked by sensitive and complex information systems. In order to make these truly direct citizen spaces, we must re-imagine the citizenship of ordinary citizens and citizen administrators to be symbolic of partially fused horizons, rather than discrete horizons without overlap. Under conditions of even a partial fusion of horizons, ever changing as citizens and citizen administrators interact, there arises a possibility that understandings that are more advanced (and secondarily, legitimacy) may surface.

Conclusion

I have elaborated in this chapter upon the idea that bureaucrats and bureaucracies, through their speech-action interactions with citizens, shape the public sphere that all members of the society are potentially part of. Bureaucracy, in this case, serves to encapsulate and to mediate the needs and wants of citizens through its reflexive and reflective interaction with citizen's demands for redressive correction to problems arising in the function of the state and economy. The concluding point of this chapter is that language and the expression of language through speech and action to and through

the bureaucracy, forms the most critical layer of direct citizen *sovereign* governance left in the modern welfare state.

CHAPTER VII

PRODUCING LEGITIMACY THROUGH ADMINISTRATIVE REPRESENTATION

A well ordered society is ‘a society effectively regulated by a public conception of justice’” (Chambers 2006, 83; Rawls 2001, 5)

A truly democratic public interest includes the interests of all members of the state affected by the implementation of policies designed to fulfill this standard. As the rightful body of participations, that representatives ought to account for, the public is an expansive mutable body of persons. As a unit encompassing pluralities, the public will express itself in a multitude of differing ways. Therefore, the standard necessary to reach a fully “public” public interest standard—total discursive participation— must be itself a highly idealized form of pluralism that defies simple realization.

The issues of plural participation in the construction of the public interest are as numerous and varied as the number of persons participating in the first place. In the process of realizing a true public interest as more than an ideal, the long-standing impediments to full social participation—justice, recognition, toleration, and representation—must be attended to. Realizing full social justice means addressing the following problematic question: how can all members of the public—the entire public sphere in a modern state—come together, under the conditions of a truly communicative situation, to articulate the public interest?

The answer to this question lies in unpacking the process through which public participants move towards the fulfillment of justice. In this process, participants must come to recognize each other, build bonds and/or bridges with each other, develop a fully tolerant position where each is allowed to speak his/her perspective fully without fear of repression (but also without the motivation for sublimating their position or of the deliberative process/ public sphere itself), represent their values or act to represent the values of their groups' identity, and monitor the transmission of these values within the resulting political structure. The processes themselves are complicated and involved, to say nothing of the variability that humanity as social construct introduces.

Much of the contemporary literature on justice, in either its social or political form, focus on justice as an end state; it is a destination to be “arrived at”.¹⁴⁰ The enormity of the concept and its ramifications often eclipse the processes necessary for the realization of justice. The precursory processes of recognition, toleration, and representation fall temporarily to the wayside. Further, and significantly for the matter here, the literature on justice—even it is political form-- does not fully address matters of policy implementation as ordinary processes of governance in the name of justice.

As depicted in the many elaborations of contemporary democratic theory, discourse or deliberation is an independently valuable process, or an end that is distinct

¹⁴⁰ The contemporary literature on justice is vast, but remarkably “centripetal” around Rawl’s theory of justice. Absent Rawls’ canonical contributions (1999a, 2001) in particular, significant tracts on justice include: Ackerman 1980, Barry 2005, Fraser, 1997, Galston 1980, Miller 1976 and 1999, Tomasi 2001, Walzer 1983, Young 1990

from the administrative institutions of governance.¹⁴¹ Depictions of deliberation divorce administrative institutions even from the administration of the conversation itself.¹⁴²

While a number of discursive and deliberative, democratic theorists laud the long-dead constructs of the town-hall meeting, the forum, or the *ekklesia* as locations of true deliberative possibility, in doing so they continue to ignore the centrality of administrative institutions and administrators in these spaces. In doing so, do they fail to address the effect that citizens' deliberations with administrators, or citizens' deliberations as administrators, have on the justice outcomes of political policy. This separation of discursive processes from the goals of government and the segregation of participants in deliberations reifies a false theoretical world that fails to make meaningful progress in the study of justice as real.

In the previous chapter, an argument for considering administrators/ bureaucrats as legitimate discursive partners because of their equal citizenship status developed. Bureaucrats, like all citizens, must have their "citizen" and professional interests fully represented in the formation of a public interest standard that is fully worthy of the description "public". While in the previous chapter the focus was on the "citizen" interests of bureaucrats, here the argument progresses a step further to depict the unique

¹⁴¹ Like the literature on justice, the literature on deliberative and discursive theories of democracy is quite vast. Notable theorists include: Benhabib 1996, Bessette 1994, Bohman 1996, Bohman and Rehg 1997, Cohen 1986 and 1988, Dryzek 1990, 2000, and 2003, Guttman and Thompson 1996 and 2004, James 2004, Knight and Johnson 1996, Michelman 1997, Mouffe 2000, Rawls 1999a, Young 1990, 2006. In the public administration literature, Forester (1985, 1993, and 1999) and Fischer (2005) stand out as luminaries.

¹⁴² One continues wondering who is the "Robert" behind Robert's Rules of Order. Moreover, more importantly, who granted it Robert's legitimate right to impose "order." Whom, we might say, does Robert work for? (Robert, Evans, Honeman, and Balch, 2000).

professional capacity that bureaucrats have relative to the production of justice.

Specifically, bureaucrats operate in the public sphere not only as citizens who by chance occupy a particular public office, but also as a body of participants whose function is to serve as facilitator for the inclusion of other citizens' interests in public policy—that is, public interest—deliberations.¹⁴³

In the way that citizens experience politics in the late modern state, bureaucracy is the state. Despite the claims of the dispositional anti-bureaucrats,¹⁴⁴ bureaucrats as class of citizens, serve a distinct function in society. As has been made clear by scholars of representative bureaucracy (Kingsley 1944, Evans 1974; Selden 1997; Subramaniam 1967), "...a representative bureaucracy is a good to be provided... a bureaucracy broadly reflective of the interests, opinions, needs, desires and values of the general public has a legitimate claim to participate in the policy process" (Keiser et al 2002, 553).

Following this position, representative bureaucracies perform a social good that is normatively legitimate in a justice seeking democracy. Bureaucrats as representatives help to bring groups marginalized by gender, traditions of non-participation, socioeconomic status, or race, back into the discourses. Bureaucrats, as citizens and as representatives of citizens, are a unique body of participants in the political public sphere. The public service of public servants (another name for bureaucrats) includes

¹⁴³ When using the term citizen throughout this chapter, I mean all of those persons affected by social political policy. However, I do this with an eye towards the unique role that bureaucrats play vis-à-vis more marginalized subsets of the population.

¹⁴⁴ Recalling from earlier in the work: the disposition of anti-bureaucracy is a "mood" that has stricken the modern political philosopher and compels him/her to argue that bureaucracy is pathological, and does ill for society, while enjoying (contradictorily) the fruits of bureaucratic labor such as social pensions, clean water, and police patrol.

both transmission of the values of those ordinarily silent in the making of policy and advocacy for social justice deliberation. Bureaucrats are, for the objective of public sphere discourse, a lynchpin that holds the citizen to the state.

The concept of the bureaucrat as representative takes as a starting point the idea of bureaucratic citizenship, stewardship, and advocacy as useful activities for the realization of democracy and justice. This definition contradicts significant tracts of literature in political theory that is wont to declare bureaucratic activity, outside of “counting manhole covers,” an affront to electoral democracy.¹⁴⁵ For citizens, bureaucrats serve as readily accessible agents of the governing structure. Through interaction with administrative institutions, citizens may directly challenge the state for recognition of their identities, assess the degree to which their identities are permitted/ tolerated by the state, and gain representation through commonly accessible channels. In their capacity as representatives and stewards, bureaucrats play a role of recognition of citizens, toleration of citizen identities, and transmission of citizen values through active representation.

The estimation here of the political value of bureaucrats as stewards and representatives, echoes a common refrain from the earliest Greek thought, that bureaucrats are guardians—members of a protectorate class-- that intervenes in the complexity (perhaps, even the impossibility) of direct democratic participation by voice,

¹⁴⁵ Note the vast literature of political control. Though this literature is not often included as part of the political theory literature, encapsulated in this section of thought are significant ideas on the importance of political principals (legislators, executives, judges) control of the bureaucracy. Primarily the arguments suggest that political control of bureaucrats, through a variety of machinations, is the only way to secure government from spinning into oligarchy, corruption, and tyranny. See McCubbins, et.al. (1989).

vote, or “click” (Pool, 1998). Bureaucrats, as stewards of the citizenry, play the role of intermediary between citizens and the law making institutions of government.

Bureaucratic stewardship involves a challenging degree of communicative interaction between citizens and bureaucrats, including a number of actions that make communicative interaction valuable in a government structure dependent on representation, such as a liberal, constitutional democracy. Specifically, the communicative, democratically valuable actions of bureaucratic stewardship of citizens are (broadly) recognition, toleration, and representation.

Social Justice and the Process of Representation

The ideal of “justice for all” as the ultimate political good is a core notion in modern theories of politics. Within an overwhelming majority of theories of politics, political processes, and political institutions justice figures as the *telos* of all that is political. While definitions of the term “justice” vary, the basic principles for modern politics, elaborated in summary form by Rawls are:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both a) reasonably expected to be to everyone’s advantage, and b) attached to positions and offices open to all” (Rawls 1999a, 53).¹⁴⁶

Justice, to echo a refrain in multiple elaborations, concerns what individuals are

¹⁴⁶ The plausibility of these two principles as elementary to social justice remains up for debate in political theory. However, the contests over the means by which social justice happens are more important here.

rightfully due. As an idea, justice serves to categorize our perceptions of desert and goodness, excess and badness. As an idea guiding institutions, justice serves to categorize actions as deserved or excessive in either punitive or palliative measure.

In the context of public administration, justice is a normatively laudable good for the guidance of action. Justice is, to reprise an earlier theme, the heart of the public interest. The public interest is normatively good when it serves the end of justice. The fulfillment of Rawls' two principles of justice and the notion of justice as desert guide normative thought about public administration practice. Justice administered cannot escape the social—it cannot escape the regulation of the society in which it evolves. Full social justice arises through those evolving processes of culturally, politically and economically manufacturing the social. This requires conceptualizing the processes of participation so that bureaucratic actors are include as integral in the institutional efforts towards realizing social justice.

The co-evolutionary process of the public interest and political administrative processes diminishes the utility of Rawls' position on justice, as it defies the practical understanding that public administration scholars have of the world in which they operate. Specifically, in the context of public administration, there can be no original position where the world is unknown.¹⁴⁷ For public administrators as citizens and the

¹⁴⁷ The conditions of the original position are (1999a, 118-119): "... the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor again does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society." There is much more said here on the lack of knowledge that original participants have, however the few particular facts described here as unknown already presuppose a condition that public

representatives of citizens, social justice comes out of the process of an already constituted political and social system modified through conscientious institutional pressure alone. “Citizens... know everything about themselves and in particular they are very aware of the way their fundamental moral and religious ideas diverge” (Chambers 2006, 83).

Social justice, if we are to take the political interpretations of Rawls seriously, requires action on the part of political actors (citizens) and political institutions (public administrators). In elite and minimalist theories of democratic politics, voting is the highest political act available to the average citizens in modern states (Przeworski 1999). In fact, participation in the political sphere (which was formerly the highest political act in more Aristotelian conceptualization of politics) as interaction in political decision-making is interpretable through this minimalist lens to be merely voting or not voting. For minimalist conceptualization of citizens’ participatory efforts, checking a box and dropping a slip into the ballot box, not active engagement participation in the formulation or formation of law, is acting politically in ordinary times.

Alternatively, in a more active conceptualization of the democratic state, the highest political act is to represent those who are not present in the process of law formation (Young 2000). Representation-- *transmitting the values of a constituency to whom one is connected deeply but who are not otherwise present into the processes involved in making the situation--* is the highest political act available to men in

administrators cannot accept as useful for the articulation of a socially just system. Social justice in public administration entails efforts to reach the two principles of justice in the context of the “real” of valid concern for administrators themselves. My effort to describe social justice as a process is an effort to describe a “real” path to social justice in which public administrators play a critical part.

democratic systems in the modern time. The act of representation, being an ultimate act of politics, is the culmination of a series of previous acts that are integral to justice itself.

Processes of Representation

Representation theories of modern thinkers of politics include such categories as authoritative, active symbolic, substantive, thick or thin (Pitkin 1969). Conventional descriptions of representation offer a view of representation as a legislator's activity vis-à-vis a citizen constituency only, not a function of other branches of government. The conceptualization of representation in much of conventional political theory takes a particularly limited view of the role of bureaucratic institutions and the role of representation in the process of realizing social justice (Hindera 1993a, 1993b; Hindera and Young 1998; Kingsley 1944; Keiser et al 2002; Meier 1975, 1993; Meier and Nigro 1976; Meier, Wrinkle and Polinard 1999; Nachmias and Rosenbloom 1973; Nigro 1974).

Thus far, many descriptions depict representation as a good in and of itself. Not until Young's interpretation (2000) representation was it conceived of as integral to the process of realizing social justice. This is not to suggest that representation is a final achievement or outcome possessed wholly by any institution or party. Rather, this means that the processes of representation are continually on going and non-autopoetic with respect to the political and social whole.

The process-oriented evaluation of representation draws upon the recent and remarkable work of Young, and draws upon the older work of Dewey, particularly his

work on the continuity of experience. For Dewey, representation was a part of the social processes of making sense of those problematic aspects of social life together. That is, one represents another, knowing that the person whom they are representing has a problematic view of the situation. Without the insertion of a problematic viewpoint, there is, to be clear, no need for representation of the other's viewpoint as such. If views are homogenous or symmetrical about a situation, the presentation of the present individual's values will suffice to satisfy all others. In the plural situation of heterogeneous or asymmetric viewpoints, representation becomes necessary so that no persons engaged in a particular situation will feel themselves outside of the social conditions of the situation.

Representation, though, as part of the distinct situation, involves multiple stages and modes of experience in a particular situation. As Dewey indicates in *Experience and Education* (1938a), the understanding of a situation envelops the process of experiencing the situation both socially and objectively, through continuity, progress, and interaction. Representation of another's values or perceptions of a situation occur socially and objectively through a continuous process of interaction (Hall 1996). Pragmatic representation is the re-presentation of another's experience with in a given situation.

A number of descriptive qualifiers come along with the concept representation in modern political theory and political science. The most useful of these for discussing the relationship of public administration to the process of representation is *active* or *passive* (Mosher 1978). Mosher distinguishes two meanings of bureaucratic representation.

Passive representation ‘concerns the source of origin of individuals and the degree to which, collectively, they mirror the total society. It may be statistically measured in terms, for example of locality of origins and its nature (rural, urban, suburban, etc.), previous occupation, father’s occupation, education, family income, family social class, race, religion.’ In contrast, in active representation, ‘the individual (or administrator) is expected to press for the interests and desires of those whom he is presumed to represent, whether they be the whole people or some segment of the people’ (Lim 2006, 194).

Active representation is not distinct from the prior acts involved in the process of representation; to represent another actively requires the continuous interaction with the other’s experience. As process of experiences shared, representation requires multiple prior actions. These actions include *greeting, interaction, recognition, acknowledgement, toleration, inclusion, intercourse, and participation*. Additionally, these processes must be recurring constantly in the social interactions of the moment.

Unity of Representation Processes

Greeting, interaction, recognition and acknowledgement, while being identified as conceptually distinct here, occur in our every day lives so quickly as to seem almost simultaneous. Particularly when recognition is part of our realization that we “know” someone from previous interactions (with that specific person or with their obvious identity markers), there is a compression of the acts of greeting, interaction, recognition, and acknowledgement into seamless social action. Indeed, in this age of information, where alternative identity constructs and their obvious markers are “known” as novel points of social information, the prior actions necessary to reach recognition and acknowledgement are compressed as the information exchanges previously necessary to

reach this point are made less demanding given expectations of (and a real probability of possession of) prior information. The utility of making the processes distinct however, is necessary here as bureaucrats, as government stewards, mediate the interaction between citizens and “the state” in each of these processes culminating in representation.

Greeting

It is difficult to differentiate conceptually interaction and greeting. Indeed, in many of our daily activities, we may interact with others without formally greeting them or them greeting us. However, even in the perfunctory interaction of purchasing a basic service, we often experience a form of greeting prior to our interactions that, while possibly unspoken often takes the form of an expectant look or nod of the head. Greeting is the initial (possibly, but not necessarily, verbal) step taken in social interaction. The function of greeting is to open of the possibility of further interaction. While “hello” may seem to be a perfunctory statement in much ordinary interaction, its functional value is to introduce to other participants in the social interaction, the possibility that we intend continued interaction with them. The mere greeting opens the possibility of deliberation and social power exchange. Greeting says to the other actor that we sense their being and wish to respond to it.

In the moment of communicating I call greeting, a speaker announces her presence as ready to listen and take responsibility for her relationship to her interlocutors, at the same time that it announces her distance from the others. ... The gestures of greeting function to acknowledge relations of discursive equality and mutual respect among the parties to discussion, as well as to establish trust and forge connection based on the previous relationships among the parties” (Young 2000, 59).

Interaction

While a type of interaction, greeting itself is functionally prior to what will be defined here as “interaction.” Interaction, as described (and here, borrowed from) Arendt, is the “putting forward of ourselves” for judgment, appreciation and/or critique within mutually exchanging (reflexive) speech and action. This “putting forward of ourselves” is done in the context of being public actors and therefore, being inevitably political.

Being an active participant in the public political space ties one into the project of realizing the full plurality of social existence as communication. Drawing heavily on her own Aristotelianism, Arendt couples social interaction and being-at all in the process of interacting in public. Interaction is the process through which we come to make real our own social existence equally in the public and political realm, as a space distinct from the apolitical individualism of the private.

Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position. This is the meaning of public life, compared to which even the richest and most satisfying family life can offer only the prolongation of one’s own position with its attending aspects and perspectives.... Only where things can be seen by many in a variety of aspects without changing their identity, so that those who are gathered around them know they see sameness in utter diversity, can worldly reality truly and reliably appear (Arendt 1957, 57)

Arendt, like Dewey, appreciates the very nature of the social as the interactive and vice versa. Similarly, both appreciate the necessity of openness to multiple forms of interaction, what Dewey would describe as “freedom of social inquiry and of distribution of its conclusions” (1927, 166). This openness Arendt will see social interaction as “performative”, while Dewey will see it as “communicative”.

There can be no public without full publicity in respect to all consequences which concern it [the notion that men may be free in their thought]. Whatever obstructs and restricts publicity, limits and distorts public opinion and checks and distorts thinking on social affairs. Without freedom of expression, not even methods of social inquiry can be developed. For tools can be evolved and perfected only in operation; in application to observing, reporting and organizing actual subject-matter; and this application cannot occur save through free and systematic communication (1927, 167).

Publicity is part of the shared experience of interaction between persons and those artifacts (tools) which they people produce to manage their lives shared in common.

Interaction, active and importantly tied to interaction, is more than merely “doing.” Interaction is equivalent also to political listening. Drawing upon Arendt again for definitions of listening and political equality:

One kind of ‘equality attending the public realm’ is political equality. Political equality is an equalizing of unequals; it gives equal standing to those who may otherwise be unequal.... Political equality makes peers out of those who are different. In equalizing us, political equality creates a space where we ‘are listening and can be listened to’” (Bickford 1996, 57).

In the interactive realm of the public, not only speaking but also listening, counts towards the quality of the interactive character of the public sphere.

Listening

Despite its passive connotation in ordinary speech, the act of listening is an active phase of the process of social interaction. Listening is the action where we absorb for purposes of interpretation the information about others as put forward through the media of speech, performance, and interaction in its various forms.

Political listening is not primarily a caring or amicable practice, and I emphasize this at the outset because ‘listening’ tends immediately to evoke ideas of empathy and compassion. We cannot suppose that political actors are sympathetic toward one another in a conflictual context, yet it is precisely the presence of conflict and differences that makes communicative interaction necessary. This communicative interaction—speaking and listening together—does not necessarily resolve or do away with the conflicts that arise from uncertainty, inequality, and identity. Rather, it enables political actors to decide democratically how to act in the face of conflict, and to clarify the nature of the conflict at hand. Deciding democratically means deciding, under conditions in which all voices are heard, what course of action makes sense (Bickford 1996, 2).

Listening in the truly interactive sense is not passive—it is decidedly active and political.

In political listening, we absorb information put forward to us, form questions of clarification, and engage in the process of categorization of our experiences and those of the “other.” The interactive component of listening becomes clear when we ask questions that arise, reformulate of our categorization because of mutual interrogation, and use the information drawn from the processes (Forester 1999). This interactive process of listening (and speaking), in its ideal political form, is iterative. The iterative nature of interaction requires that participants do more than merely listen and speak; listening requires the simultaneous action of recognition.

Recognition

Recognition is not monological or dyadic between individuals alone, but is rather dialogical and mutual between individuals and individuals, and individuals and institutions. Tully (2004) rightly suggests that recognition is always bound into the social process of government and being governed. In the struggle for recognition

between individuals and institutions, the challenge is not directly against the institution as institution, but is rather a challenge against the manner that the institution's effects misunderstand the outside world or harm the life/livelihood of the individuals seeking recognition. Consequently, we can view individual to institution recognition claims as:

Struggles over recognition are struggles over the intersubjective norms (laws, rules, conventions, or customs) under which the members of any government recognize each other as members and coordinate their interactions. Hence, struggles over recognition are always struggles over the prevailing intersubjective norms of mutual recognition through which the members (individuals and groups under various descriptions) of any system of action coordinated (for the practice of governance) are recognized and governed (Markell 2003, 86-87).

In the context of recognition, the intended effect of changing practices is paramount.

The effort to change minds is a subsequent concern more properly called *toleration*.¹⁴⁸

The act of recognition in the context of bureaucrat-citizen (institution-individual) interaction is practically distinct from the act of recognition performed by citizens by way of each other. Recalling the fundamental thinker of recognition—Hegel—the pursuit of recognition is the pursuit of an autonomous individual for acknowledgement from his/her social surroundings to be a separate and equal, legally universal, being (Honneth 1995, 16-18). In Hegel's thought, and in the thought of the some toleration scholars who have followed, the act of recognition always supposes some form of social stratification between actors prior to the situation at hand. Recognition is always part of

¹⁴⁸ My attention to the concept of toleration is certainly brief and a more thoroughgoing analysis would include much more attention to the medieval period. For more attentive analyses, see Nederman and Laursen 1996 and Nederman 2000.

the effort of one actor aiming for the equalization or just distribution of power from one to another.

From the perspective of the citizen, recognition claims inhere in a desire for recognition as a secondary consequence to the provision of either psychosocial or politic-economic goods. According to theorists of recognition such as Charles Taylor (1994), Will Kymlicka (1995) and Axel Honneth (1995; and Fraser and Honneth 2004), the basis of recognition claims is a deep-seated need for individuals to be “known”—to be granted a socially valuable resource of individual identity status—on the basis of their own estimations of themselves. Conversely, according to others such as Nancy Fraser (2004), the basis of recognition claims are desires for redress of structural and economic inequalities that stymie the individuals’ ability to express their identities as fully as they would like. For still others, Galeotti (2002), claims to recognition are claims to equal rights to a social good—true plural toleration of one’s identity as valued identity—based upon a personally felt need to affect a truly egalitarian liberal democracy.

Reflecting on the act of greeting and its relation to the act of recognition, the practice of greeting ties greeting- recognition into the tense situation of anticipation of reciprocity as recognition of equal claim to the situation. As Young (2000) makes clear, greeting as part of the social process may potentially break down from non-reciprocity of the greeting act. That is, if one actor assumes all of the social power exchange for him/herself, mutual recognition falls flat at the outset. Power between individuals is no longer transferable if one actor denies the validity of or reproaches the other for, the

greeting initiated. In order for recognition to occur, there must be a possibility of parity between actors.¹⁴⁹

Power, in the situation of recognition, manifests in actors seeking a legitimate basis upon which to amass the social currency necessary to coerce another. Rather, relations of power govern the terms upon which each individual founds their claims to seek self-authority. Seeking of recognition as self-authority occurs only in the public performance of the resolution to the Hegelian master-slave dialectic. The authority won in the context of power exchanging recognition is the authority of one actor to define his or her identity—to have identity authorship—distinct from the direct relationship of him or herself to the other. To re-invoke the Hegelian distinction, the effort of the slave to be recognized is the slaves' desire to define him/herself not as a slave but as an individual with both self-prioritized attributes and an individual standing vis-à-vis the rules of social justice (and its consequences) (see Honneth 1995; Pelczynski, 1984). The psychological need for recognition at the individual level then is the desire to self-prioritize one's multiple identities as the individual sees fit according to his/her own conceptualization of what is valuable.

Recognition and the State

In common use, recognition is non-reciprocal when it occurs between individuals and institutions. Between individuals and institutions, recognition happens when the

¹⁴⁹ Parity, to evoke the French political movement's use of the term *parite*, is the achievement of universally equal status by acknowledging the differences that inhere in us all, but moving beyond them to realize the higher goal of more equal (dare I suggest more universal) decision making procedures and consequences of decisions (Wallach Scott 2005).

institution responds in a regularized, procedural, way to the individual's claim of need. Recognition, however, is also a "desire" or need of institutions (in Markell's case, the state) to be recognized. That is, recognition requires reciprocity, whether from other individuals or from institutions.¹⁵⁰

However, the continued interpretation of the bureaucratic arm of the state as divided from the process of representation, of which recognition is a critical part, is self-limiting in the discussion of justice. Young offers the following defense of the state and its bureaucracy as necessary institution for all aspects of social life:

State institutions in principle are the most important means of regulating and directing economic life for the sake of the self-development of everyone. Only state institutions have the kind of power that can limit the power of large private enterprises and facilitate the use of that private power for the collective well-being. Well-organized states accomplish large-scale collective goals by facilitating social co-ordination among individuals and groups. To manage such co-ordination states must be centralized and regulative: they must gather useful information, monitor implementation and compliance, and rely on coercion in case of non-compliance. Only state institutions can facilitate the co-ordination required for a society to ensure investment needs, skills development, infrastructure, and quality environment for everyone, and to organize many useful occupations so that those not employed or working for private enterprise have options for meaningful work. Democratically legitimized states are not necessary evils; potentially and sometimes actually, they exhibit uniquely important virtues to support social justice in ways no other social processes do (2000, 186).

Unlike Young, who offers a more institutionalist focus to her argument for the importance of the state in representative processes, Markell couches his interpretation of the state's claim of and need for recognition in the language of sovereignty. He suggests

¹⁵⁰ That institutional recognition is just the procedurally determined recognition of one individual by another is a possible argument. However, in the situation of the individual and the state, individuals are requested to recognize their role as part of and as constituent of the state. Institutional recognition is not merely the aggregated recognition of a critical mass of individuals in institutional roles; it is the recognition of the institution qua institution by the individual.

that, “the ideal of recognition... anchors sovereignty in knowledge, that is, in the prospect of arriving at a clear understanding of who you are and of the nature of the larger groups and communities to which you belong, and of securing the respectful recognition of these same facts by others” (Markell 2003, 12). The politics of recognition demands then that citizens recognize the state and its sovereignty (despite its always already present status) in their individual demands for recognition.

Recognition of the sovereignty of the state, like the needs for sovereign recognition as individuals, is problematic. But the elemental reality remains, the politics of recognition are not unidirectional, but are dual and reflexive in that there are present demands made by both the state and individual. Following Markell’s explanation:

States’ claims to sovereignty are also typically different from other moves made within the politics of recognition in two respects, both of which suggest that these state claims may demand special critical attention. First, they are less often perceived as demands for recognition than are say, the claims of subordinated people and groups, which are already socially marked as ‘particular’ and therefore do not enjoy the privilege of appearing pre or extrapolitical in the way the idea of state sovereignty, among others, so frequently does. Second, and relatedly, the political encounter between a state and an emergent political constituency demanding an end to some injustice in relations of identity and difference is, typically, highly asymmetrical. This is in large part because the state, while not necessarily truly sovereign in the way it purports to be, nevertheless does command extensive social and political resources; and it does so partly by virtue of the fact that it can usually draw upon a history of relatively stabilized relations of recognition—relations from which it derives authority and power—with other, often much larger and more powerful constituencies. For this reason, creating incentives for people to frame their claims about justice in ways that abet rather than undermine the project of state sovereignty (Markell 2003, 30).

In terms of the interaction of citizens (or even non-citizens in some cases) seeking recognition from the state, the motivation for seeking recognition and the basic concept of recognition remains essentially the same. However, the power of the “always already

sovereign” state over the citizen makes the “doing” of recognition in individual-institutional interactions different according to the law of the situation. Markell (2003) tries to reconceptualize the act of the state’s recognition of citizens as the mending of a previous ontological error. That is, prior to the citizen’s approach to the state for recognition, the state has fundamentally misunderstood the citizen’s state of being and action. The state, in misrecognizing the citizen ontologically, has failed to understand the actions and circumstances unique and necessary to the citizen’s life. The process of recognition (on the state side) is the act of re-cognizing—reworking the ontological status of—the citizen appropriately, based upon the self-prioritized values of the citizen themselves. To re-invoke the pragmatist description of representation above, recognition as part of the representation process requires the reintegration of the other’s experience of the situations. That an individual feels “unrecognizable” to the state suggests that the continuity of interaction between the two—citizen and state—has broken down. Though the breakdown of social processes may occur at a number of junctions in the process of recognition, depictions often include a breakdown in the recognition of an individual’s rights claims vis-à-vis the law.

Recognition and the Law

When citizens petition the state for recognition, they are asking for acknowledgement of the prior misunderstanding of their relationship as universal legal being with rights claims to freedom within the state. The redress for the subsequent misapplication of this fault in the implementation of recognition is the outcome preferred

by citizens seeking resolution. These demands, if successful, ought to culminate in the eventual redrawing of the lines of laws and norms to re-accommodate the citizen.

Law, when speaking of recognition, is the codification of public interest expectations made based on previously known citizen ontologies, their circumstances, and interactions. The breakdown of recognition then is the codification of a public interest that is not just. The language and application of the law does not recognize the rightful desert claims of each voice.

Laws, however important for citizens, we know experientially only, that is, in the context of their administration. Moreover, the need for recognition being a need felt experientially, not textually, requires the recognition claims be leveled against the institution that makes law initially meaningful to citizens. Again, following Appleby:

The real meaning of law appears only in the course of its administration. It is only as assessments are made, for example, that there is any demonstration of what revenue a tax law will provide and what burdens it will impose. Citizens who study and use the technical provisions of the income-tax law aid the government in actually determining what the law is (Appleby 1952-76-77).

The effort of seeking recognition from law as merely terms would be itself pointless, as law itself has no inherent “felt” or “practical” effects on citizens’ lives before its administrative actualization. Recognition comes from bureaucrats who implement law.

Law, and the implementation of law, is problematic for the politics of recognition because, as Markell (2003) has pointed out, the identities codified into legal structures are often misrecognition not in accord with the evolving self-reprioritization of citizens embedded in culturally defined identity and recognition formation process. Law, as related to identity, lags (at minimum) one iteration. As such, as bureaucrats attempt to

implement law, they are always attempting to implement a law that misrecognizes to start. Following Fraser, if the law fails to recognize citizen's own psychological demands for true recognition, it is an affront to the citizen's wellbeing. Following Hegel, that there is an implementation of law that does not take into account the autonomous individuality of each universal legal subject, is a crime. Such indictments as the potential for creating situations of criminal negligence of citizens, gives the debate over the politics of recognition an alarmist air of both finality and immediacy.

Following Galeotti (1993; see also Lukes 1997), that a state fails to accommodate—to recognize-- those “excluded identities” places the state (as both an institutional and population) in question. That a state does not recognize those identities excluded suggests that such identities are not publicly acknowledged as equally valuable by a group of people (whose identities are recognized) that hold exclusionary and/or threatening attitudes towards difference. That a state fails to recognize a particular set of identities, whether stateness is measured here as procedures or people, suggests that the state is itself intolerant and, again following Galeotti, illiberal, discriminatory.

This much is also apparent in the description of the politics of recognition described by Taylor (1994):

Taylor has suggested that the ‘politics of recognition’ has come to mean either of ‘two rather different things’: a difference-blind politics of equal dignity, deriving from Rousseau and Kant, of which the contemporary liberalism of equal rights is an example, and a politics of differences, involving claims to distinctness and for reverse discrimination, not just to allow the old blind rules to come back into force but ‘to maintain and cherish distinctness, not just now but forever’ (Lukes 1997, 216).

Particularly if we view bureaucrats as directly implementing law with no modification to accommodate changing social structures, bureaucratic action will consistently be out of step with the process of recognition and toleration on going in society. The lags inherent in law, and the subsequently worse lag in bureaucratic implementation, are then clearly problematic in a state attempting to achieve recognition as a goal of the representative process.

The redress of failures in recognition lies ultimately in the law formation process itself. However, the role of the bureaucrat-citizen communication process for ameliorating mis-recognition is a potential temporary solution. Recognition by the state, something seen through the application of the laws, requires engagement of the full process of representation. That is, the solution to the matter of recognition comes from the process of making the state “just” or reworked with full inclusion in mind.

Acknowledgement

Just as greeting and interaction do not lead directly to recognition, but propel the generation of social power through the process itself, demands for recognition do not necessarily create a situation of toleration. Rather, recognition flows into the process of acknowledgement, then to welcoming, to become toleration. Acknowledgement is more than just recognition—it is an affirmation (or negation) of the validity of content of claims to recognition. To utility, the language of Galeotti, in the acknowledgement stage, the public recognition of a previously excluded identity is “justified.”

Acknowledgement entails the changing of minds of participants involved in the recognition process.

Markell defines acknowledgement in four parts, which he finds distinct from the acts of recognition:

So acknowledgement is in the first instance self—rather than other directed; its object is not one’s own identity but one’s own basic ontological condition or circumstances, particularly one’s own finitude; this finitude is to be understood as a matter of one’s practical limits in the face of an unpredictable and contingent future, not as a matter of the impossibility or injustice of knowing others; and finally, acknowledgment involves coming to terms with, rather than vainly attempting to overcome, the risk of conflict, hostility, misunderstanding, opacity and alienation that characterizes life among others. These four features of acknowledgment are, of course, very abstract, and they do not tell us what acknowledgment looks like—but, importantly, there is no general answer to this question, in the same way that there is no general answer to the question of what moderation or justice looks like (Markell 2003, 38).

Important in the four components of acknowledgement is the realization of one’s individual finitude in understanding (making sovereign) the ontological status of another, and the acceptance that acknowledgement is more about “what we do in the presence of another, how we respond to or act in the light of what we do know” (2003, 34). Acknowledgement entails not only the attitudinal change of one to the other, but also a shift in motivation for action with respect to us and others as socially intertwined beings. Acknowledgement, then, as subsequent to recognition, is the acceptance of the significance of another’s sovereignty and the assimilation of their recognition needs into your own.

Welcoming

This attitudinal shift entailed in the act of acknowledgement ties into the subsequent act of what Arendt (1957) and Markell (2003) describe as “welcoming.” The importance of welcoming in the social processes that culminate in, but are not finished by recognition, seems obvious. That is, in order to represent someone, we must invite in the “being,” demands, and perceptions of the other into the sphere of deliberations. Welcoming, in the social process of representation, is the first of the steps to “taking in” what has been interacted with, acknowledged and, recognized.

Taking in the recognition claims of one by another assumes a power differential (one takes in from the other) that makes the mutuality of recognition problematic. However, the notion of welcoming developed in by Markell, simplifies this problematic somewhat:

Welcoming, here, refers to the risky inclusion of another in a shared activity, without reference to her identity, or state of character, or degree of merit. And, importantly, this “without” does not signify that the act of welcome is grounded in an appreciation of someone’s universality rather than her particularity; it is not the “without” of liberal abstraction. To welcome someone says more about the welcomer than the welcomed: it represents a slackening of the urge to convert an uncertain activity into a predictable process by setting and enforcing strict boundaries to participation” (Markell 2003, 180).

The act of welcoming does not require the welcomer to have all knowledge about the welcomed or is able to access/assess the sovereign position of themselves and the other independently. The act of welcoming indicates a mutual appreciation that the social currency that one has is valuable to, valued by, and perhaps able to be spent by/on behalf of the other.

Toleration

Toleration, in its Lockean form, entails the establishment of a position of acceptance, not mere indifference to, the religious perspectives of others in the society. This acceptance was based not on the belief in the inviolability of negative liberties of the other, but rather the belief in the fundamental right of the other (granted by participation in Christianity) to believe as s/he sees fit. As a belief, toleration is true acknowledgement—the attitudinal shift of acceptance subsequent to recognition of the other as equally valuable. The act of toleration of the citizen by the state, however, is different.

Toleration as a state act is either active or passive depending on the response of the state to the initial terms of the struggle for recognition. Active toleration by the state is the transformation of laws and norms to allow the recognized identity to be an integral partner to solving persistent problems that confront the state. Passive toleration is the transformation of laws and norms to allow for the protection or maintenance of the recognized identity as legitimately valid, but not “useful,” to the solution of state problems.¹⁵¹

¹⁵¹ This, the readers will note, is a departure from Locke whose position on the role of magistrates (bureaucrats) in the process of toleration is certainly most active: “It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general and to every one of his subjects in particular the just possession of these things belonging to this life. If anyone presumes to violate the laws of public justice and equity, established for the preservation of those things, his presumption is to be checked by the fear of punishment, consisting of the deprivation or diminution of those civil interests, or goods, which otherwise he might and ought to enjoy. But seeing no man does willingly suffer himself to be punished by the deprivation of any part of his goods, and much less of his liberty or life, therefore, is the magistrate armed with the force and strength of all his subjects, in order to the punishment of those that violate any other man’s rights. ... Because the care of the soul is not committed to the civil magistrate, any more than to other men. It is not committed unto him, I say, by God, because it appears no that God has ever given any such authority to one man over another as to compel anyone to his religion. Nor can any such power be vested in the magistrate by the consent of the

The procedural manifestation of toleration is the construction of a law that allows persons gifted with a challenging identity the permission to seek the “good life” according to their individually defined terms with as minimal interference as possible in the community of the state. Active toleration is the construction of policies that encourage the realization of a person/ groups positive liberty by enacting laws that prevent the infringement of others upon the group (negative liberty). But it is important to note that active toleration is not the enforcement of the state a notion of tolerant good (toleration as an end) upon all other groups to form an early (non-experientially based) estimation of the value of that group. Actively tolerant law does not require state mandated sensitivity training or necessitate inclusion in affirmative action programs. Actively tolerant laws encourage groups to form, coalesce, express themselves as they see fit, and it inhibits the rights of in-groupers to interfere with them, but it does not subsume them into the state’s battery of norms, their identity construct is uniquely laudable.

Passively tolerant acts by the state are those laws that inhibit the actions of out groups to infringe upon the potential expression of a group identity, but this does not include steps to facilitate the development of positive liberty. Passive toleration, as a matter of course (except in extreme circumstances of subversive threats), precedes active toleration temporally. States, as inherently conservative organizations seeking to

people, because no an can so far abandon the care of his own salvation as blindly to leave to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace. For no man can, if he would conform his faith to the dictates of another. ... In the second place, the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind...” (Locke 1950).

maintain order, do not “wish” to tolerate any at all—toleration being an “expensive” act. It is only under duress that states will tolerate an identity at all. This extreme toleration is a type of procedural toleration meant to quiet groups or individuals that threaten the state.

Like recognition, the act of toleration does not go one-way (state to individual alone); toleration by the state involves some re-cognition of the state by individuals. Fundamentally, it means we must accept the state as an actor which enters into a relationship of reciprocal obligation that recognizes the sovereignty of challenging individuals. In defining toleration as a state act, the idea of useful versus less useful (but not “useless” per se) identity constructs brought out through recognition struggles needs to be addressed. States, like all other actors, must have a valid ontology recognized in social communication in order to participate in the process of true active toleration. In addition to the suggestion made throughout the work, that we understand the state (from the citizen’s perspective) as the actions of the bureaucracy itself, we must also establish an understanding of the state:

[the state is] a set of social institutions that is also among the central objects of identification onto which people displace, and through which they pursue the desire for independent and masterful agency. It is, in short, both a participant and an artifact in the politics of recognition” (Markell 2003, 28).

To describe the state as an actor, we must include attributes in a similar way to describing individual characteristics, such as having a particular interest defined with respect to both internal and external situations. To draw from Morgenthau, the state (nation, in his terms) can and does have an interest. This interest is not the attainment of

some abstracted universal moral purpose, but is the preservation of the nation and its subsequent moral principles (that arise because it is a nation of people at all) against the encroachment of all others within or without (Morgenthau 1951 3- 39). States as ontologically valid beings have a degree of individual sovereign liberty to choose the manifestations of interests internally and externally. The interest of states with respect to internal actors lies with the state's determinations of who can further the actualization of the state's interest with respect to protection from external actors. Those who can meaningfully advance the normative or security interests of the state are those for whom toleration is a useful move. To say that the state finds an identity useful to its interests means, then, in practical terms: the state's toleration of a particular identity assists the state in acting (and reacting to) other states and or extra-state actors (religious fidelities, corporations, or multinational organizations).

This personification of the state as an entity with interests per se contradicts the Arendtian conceptualization of politics that does not permit the definition of the state as an actor. The Arendtian conceptualization suggests that the state is only the aggregate consequence of other's actions within an indefinable "it." However, there must be a personification of the state and the attendant demarcation of a state's interests if the act of toleration is to be valid.

The state must take on a reified quality if it is to be a place for recognition, realization, and appreciation of the identity of citizens (recognition and toleration). The state personified as constitution or community has an interest and can differentiate what is in its interests or what it not. Most importantly, it can recognize and execute acts of

toleration that are either merely “expedient” or more deeply “needed.” The expedient type of toleration, or what Gray (2005) defines as *modus vivendi* toleration, is the granting of access rights to citizenship but not the acceptance (fully) into the community as part of the whole.

The differing comprehensive doctrines [within a state] may be able to tolerate one another on their own terms, but the toleration itself will remain more of a *modus vivendi*. This is so because, where there are deep empirical differences, “toleration” will not be possible as one group’s “toleration” may appear to the other as “license.” Something that would be considered a “reliable method of inquiry” by one group may not be for another. As a result, “toleration” may be an impossibility, leaving only mutual cessation of hostilities and temporary peace, but nothing more (Gray 2005, 18).

Returning to the matter of the state’s interests, given the state as a people, the interests of the state manifested in *modus vivendi* toleration reflects the interests of maintaining and preserving itself through the management of order in a *real politick* sense. *Modus vivendi* toleration is a grant to those identities that are less “useful” to the state’s interest in preservation.

To elaborate further on the useful/ less useful distinction, the state, as an actor, will always be interested in seeking accommodation of identities if their appear to have the potential to be subversive. To evoke the example of Antonio Negri—the state will always be interested in either giving acknowledgement to the productive intellectual as a valuable plural identity, or failing the pacifying effect of *modus vivendi* toleration, will jail him to preserve itself (2005). The individual will do the same: upon direct challenge, the sovereign individual will attempt to either assume or confine the sovereignty of the other, in order to continue. The state as interest bearing actor will

move to both acknowledge and procedurally tolerate those who have the potential to call its existence into crisis, but will do so preferably with a utilitarian calculus in mind, not true intent to tolerate.

This *modus vivendi* type of toleration, granted to those identities Galeotti (1993, 2002) supposes fall outside of justifiable toleration, has important consequences for not only bureaucratic action but also for law itself. Specifically, to the extent that particular groups receive *modus vivendi* toleration only, the law itself will be incomplete with respect to its constraint of the social. Consequently, because law cannot be explicitly tolerant in an active sense, the definition of state actions as tolerant must employ some considerations of the bureaucracy. The bureaucracy, as the institution that most readily personifies the word of the constitution through the actualization of law, is the source of citizen's perception that a law misrecognizes or does not tolerate their identity.

Additionally, bureaucrats may be the first representatives of institutions who may procedurally recognize a particular identity. These "street-level" institutional representatives serve to categorize identities as tolerable or intolerable, justified or unjustified. Bureaucrats, then, play a vital role as the gatekeepers of state tolerance.¹⁵²

Toleration, though, is not the end of the process of recognition; it is but a subsequent step in the processes of representation.

¹⁵² Intriguingly enough, a point not-often acknowledged in the context of the (now axiomatic) case of the hijab in French used in much of toleration and recognition literature is that the (miss) recognition of Muslim women's identity occurred in the context of a state school. Identity markers become problematic in the implementation of regulation – bureaucracy challenges identity. However, as I will later show, the bureaucratic interaction with identity is a reflexive process in which identity markers undergo challenge and change through citizen bureaucratic interaction.

Toleration and Inclusion

The idea of bureaucratic toleration is distinct from the notions of toleration within the general community. Toleration in the general sense entails a categorical shift in the content of community values to permit the peaceful coexistence of all members despite the possibility of identities expressed in aberrant, even threatening, form. In contrast, toleration among citizens and bureaucrats as stewards entails the acceptance of the ongoing possibility of expression of aberrant values, as valid with respect to the law, that the bureaucrat is obligated to uphold whether s/he explicitly tolerates them or not. Particularly, if we accept a vocationalist notion of bureaucratic stewardship (as Cooper, for example, does), bureaucratic toleration must take on a particularly expansive form. Bureaucrats must be consciously tolerant of the identities of citizens with whom they interact in the work place and those whom they encounter as citizens themselves.

Under a more limited, professional rather than vocational, model of bureaucrat-citizen interaction, the possibility exists that a bureaucrat could tolerate an identity construct in their professional capacity, but adhere to an intolerant or merely indifferent position in their “citizen” lives. Granted, this duplicitous (in) tolerance would be difficult to effect, given that the expression of intolerant attitudes by public bureaucrats in situations not pertaining to their professional capacities could result in professional sanctions. However, the emphasis on a fully encompassing position on toleration among bureaucrats is necessary to prevent the devolution of truly tolerant positions vis-à-vis the public to those that are merely *modus vivendi* forms that would limit the remainder of the representative process.

Toleration in the process of representation, entails designing one's position based on the validity of a claimant's expressions and a pretense that the execution of that law at present contains significant faults. It cannot be merely *modus vivendi*, as representation requires that the representative incorporate perspectives of the other on the situation. Further, a tolerant position in this definition does not require, on its own, a compulsion to action on behalf of the other. Indeed, a bureaucrat could take his or her social interaction and the attendant responsibility to this point only and be merely sympathetic with the claimant. Sympathy borne out of self-interested exit from the representation process at this point is not in and of itself a failure to take stewardship responsibilities seriously or to disavow a vocational stance of being a bureaucrat. If, however, the bureaucrat takes his/her vocation of stewardship as encompassing and effectual, then subsequent steps towards full active toleration ought to be taken to realize a fully representative position.

In the space between toleration and representation, three subsequent actions occur—inclusion, deliberation, and participation. True toleration is ultimately about the peaceful inclusion of all into the community. This community can of course be the community of liberally autonomous individuals or the community of like-minded adherents to a communal version of the good. Nevertheless, the objective is the cohesion of the social unit. Inclusion, then, is the result of toleration having worked—of minds successfully changed to the extent that there is little friction between the thoughts of persons towards others and their subsequent actions. If we withhold toleration from any one person, they are certainly not included. To be included is to have

acknowledgement and recognition and to have a real expectation of greeting or welcome appropriate to the social context when approaching by members of the community. In addition, we can measure the inclusiveness of true toleration through assessment of the degree to which persons of a community invite one another to deliberations and continue to deliberate together.

Interchange

In social settings, interchange is oriented to the process of realizing the extent of plurality. As the process of interaction links to the process of realizing plurality, interchange links to realizing plurality more deeply within the context of an already tolerant community. Interchange, like interaction, is dependent on actions and speech. Through speaking and acting, we deepen our understanding of one another and realize the position of one with respect to another within the social context.

Interchange, however, is not equal to participation as voting or other aggregative forms. Participation is more than perfunctory and includes the deliberative processes of narration and storytelling; it is action and speech directed towards achievement of a purpose. That purpose is, because of the logical connection between pluralism and politics, one that is inevitably public and political.

Representation

Representation, to evoke Young, “is necessary because the web of modern social life often ties the action of some people and institutions in one place to consequences in

many other places and institutions. No person can be present at all the decisions or in all the decision-making bodies whose actions affect her life, because they are so many and so dispersed” (2000, 124). The norms of a communicative democracy rooted in the prior processes of recognition and toleration necessitate that representation be social, or as Young describes it, as relational.

Representation is a process that takes place over time, and has distinct moments or aspects, related to but different from one another. Representation consists in a mediated relationship, both among members of a constituency, between the constituency and the representative, and between representatives in a decision-making body. As a deferring relationship between constituents and their agents, representation moves between moments of authorization and accountability. Representation is a cycle of anticipation and recollection between constituents and representative, in which discourse and action at each moment ought to bear traces of the others (2000, 129).

To conceive of representation as a relational social process intertwined with all prior acts of interaction, greeting, welcoming, recognition, acknowledgement, toleration, inclusion, intercourse, and participation, is to conceive of the possibility of representation as a process occurring across multiple facets of time and space. These facets of time and space necessarily include the time and space of bureaucrat- citizen interaction. Thus, bureaucrats who have been party to the process of the social all along, operating in a stewardship capacity can reasonably be representatives.

Bureaucratic Stewardship as Representation

The consideration of the state and its relationship with citizens suggests active consideration of the role of the bureaucracy as the accessible point of contact between citizens and bureaucrats. Bureaucratic stewardship is a decision, leading to an active

state of being, made by bureaucrats to take on a representative advocacy role for the citizens with whom they discourse in their professional and “ordinary” capacities. As participants in a state, bureaucrats are ever presently bound into the acts that precede representation as both “participants and artifacts” of the politics of recognition (Markell 2003).

As stewards and advocates of those in the state, who, for reasons of historical marginalization or policies of intolerance, remain outside or only partially included into the processes of the representation of the state, bureaucrats operating in a stewardship role bring the state “closer” to the citizens it serves through direct deliberation about policies pertinent to the lives of citizens. Bureaucrats, operating as agents of the state, fill a final role in the processes culminating in representation. Bureaucrats bring to citizens a relational, communicatively based social good, which they are poised to fill more readily than legislators do.

To recapitulate briefly, bureaucrats are proximal to citizens in important ways that legislators, even state and local legislators, are not. There are three key ways that bureaucrats are proximate to citizens: spatially, economically, and demographically. Spatial proximity is the degree of physical distance between citizens and bureaucrats in their daily lives. Unlike legislators themselves, who must perform their primary business apart from the citizens they serve (restricted to law making in capitol cities) or must delegate the task of “being in” the social process of representation to office staff, bureaucrats are the next-door neighbors of the average citizen both at home and at

work.¹⁵³ Likewise, bureaucrats, unlike legislators, operate and live in the far-flung localities where legislators do not find it profitable to travel.

Economic proximity requires address here as well. In terms of economic proximity (measured by salary), average bureaucrats of the Federal Government (those in the General Schedule) do not earn so much as to be out of touch with the economic needs of the average citizen.¹⁵⁴ For the median Federal Government employee (those employed in the General Schedule), salaries can range from \$16, 532 (Grade 1, Step 1) to \$118, 957 (Grade 15, Step 10). Although often compensated above the average citizen in terms of benefits (i.e., health and dental insurance), bureaucratic salaries are not overwhelmingly high compared to average citizens'. However, compared to the salary of Congressional Representatives, \$162,100 as base pay for Representatives and Senators, the distance between the average citizen and their elected representative is wide. For local public servants or employees of individual state agencies (the vast majority of the bureaucratic arm of the nation), there is little evidence for a salary disparity, as public employees are the citizens in these locales.¹⁵⁵

¹⁵³ There is an extensive (and growing) literature on the relationship between legislative campaign financing and contact. Scholars such as (Hogan 1997) have found that direct contact (telephoning, canvassing, etc) has diminished in favor of less direct contact (radio, television, etc) as advertising dollars have become more tightly regulated by campaign finance laws and campaign costs. The increased reliance on less direct (less labor intensive, "professionalized") forms of campaigning has lead some scholars to declare the advent of "rubber glove campaigning" (Selnow 1994, 6; quoted in Hogan 1997). Other research on campaign finance and voter contact include Breaux and Gierzynski (1991), Campbell, Alford and Henry (1984), Coleman and Manna (2000), Gierzynski and Breaux (1996), Goidel, Gross and Shields (1999), Hogan (2001), to name but a very small number.

¹⁵⁴ As an example, according to the Department of Health and Human Services, Housing and Urban Development assessment, the median family income of Athens-Clarke County Georgia was \$52,900.

¹⁵⁵ One needs only to think of the expansive bureaucracy that is public education. Public educators (and the support staff of school districts), approximately 3 million employees in the classroom setting alone, make up almost 5% of the American workforce. (National Center for Education Statistics, "Digest of Education Statistics Tables and Figures, 2005, Table 4) These employees—school teachers—are certainly in the category of "citizens" ordinarily defined.

Lastly, and importantly for the concept of bureaucratic representation as is often depicted in the literature in public administration, “the bureaucracy” (to encompass federal and state employees) is argued to be more demographically representative of the full demos than is the private sector. Whether as a result of the draw of public service, merit protections and tenure, “preferential hiring practices”, redistribution (Alisina, Baqir and Easterly (2000), or other more diffuse factors, the bureaucracy is populated more consistently with minorities, women or other persons representing previously unrecognized identities (for a summary of major findings see, Riccucci and Sidel 1997, 425).

The concept of bureaucratic stewardship (or bureaucratic representation) has both negative and positive implications. On the negative side, bureaucrats seeking to advance their own interests by way of their clients’ interests (Peters and Nelson 1979) perceive bureaucratic advocacy largely as the illegitimate assumption of power and authority. The fear of bureaucratic advocacy suggests that bureaucrats advocate for a particular interest based on their own needs alone and will turn consciously away from the proper guidance of the true public interest codified in the law.¹⁵⁶

On the positive side, bureaucratic advocacy is a form of advanced stewardship of citizen interests. In its most laudable form, this advocacy advances the interests of the poor, minorities, or the otherwise marginalized. Speaking particularly of “street level” bureaucrats, “street-level bureaucrats are often expected to be more than benign and passive gatekeepers, they are also expected to be advocates, that is, to use their

¹⁵⁶ Again, this perspective persists in the bureaucratic control literature.

knowledge, skill and position to secure for clients the best treatment or position consistent with the constraints of the service” (Lipsky 1980, 72). In either conceptualization, bureaucratic advocacy entails the expression of interests of a subset of the population by non-elected officials.

Communicative Action and Bureaucratic Stewardship

The practice of bureaucratic representation of citizens’ interests occurs in two primary ways. The first is the practice of bureaucrats speaking for citizens. The other is the practice of bureaucrats allowing citizens to speak through them.¹⁵⁷ Both forms presuppose a strengthened citizen-bureaucrat relationship that includes substantial knowledge on the part of the bureaucrat of the citizen’s life, interests, and needs— in short their full narrative. This advocacy function, if done well and completely, must be fully representative of the citizens’ true needs, which mandates extensive bureaucratic participation in the social evolution of representation. In either form of bureaucratic advocacy—speaking for or being a conduit for—the representative role of bureaucrats necessitates an interactive, deliberative role for bureaucrats with extensive communicative demands.

The performance of this role entails communicative action on the part of both citizens and institutional representatives-- both engage in the act of speech and the act of listening with the goal of reaching a mutually understandable and mutually acceptable

¹⁵⁷ Speaking for citizens or allowing citizens to speak through are practices that fit within Mary Parker Follett’s conceptualization of “power with” rather than “power over.” In many ways, my understanding of the role of bureaucrats in deliberation is allied with Follett’s as expressed in the *New State*, and Cooper’s interpretation of Follett’s contribution, particularly her view of democratic holism in which all citizens are interactive partners in the state.

position. Through this process of communicative interaction, the actors interpret hermeneutically the meanings of the other's expressions. In deliberative communication, the bureaucrat and the citizen make themselves known to each other through a complex dynamic involving extensive cooperation and exchange. As Forester makes clear, this dynamic of listening, deliberation, speech, and action occurs in multiple, often intense, ways:

The deliberative practitioner learns from communication and argument, the actual interpretation and reconstruction of what parties working together say and do. In deliberative practice, critical listening, reflection-in-action, and constructive argument all interact. In practice, planners and policy advisers must do much more than rehearse public deliberations imaginatively before the fact. They must make them work. They must convene and staff public meetings, provide briefings to participants, respond to the needs of several parties at once, and many times shuttle back and forth to meet with angry and conflicting parties. The resulting public deliberations are iffy and contingent, precarious and vulnerable, but planners can play mediating midwifery roles nevertheless. Often planners must bring conflicting claimants to and through the public arena to deliberate practically together: to participate together and learn, to reach joint gains whenever possible, to craft effective strategies and real options, and to implement and to meet their needs—not just to encourage deal making behind closed doors, not to cool out angry publics, not to minimize participation to satisfy meeting requirements, not just to maximize noise at pro forma public hearings (Forester 1999, 12-13).

Within this deliberative stewardship position, the bureaucrat designates him/herself as enforcing the importance of social forms of interaction. Bureaucratic stewardship requires recognition, toleration, and inclusion so that communication according to standards of public reason and discourse ethics can occur. It requires the a priori commitment to seeking intersubjective parity and adherence to the ethics of discourse, in order to establish a truly communicative space. To do so requires appreciation of the precursory acts and the final effects of social justice.

Representation and the Bureaucracy

Suggesting a fully representative role for bureaucracy will likely garner criticism from a number of corners. Scholars of American government, for whom the ideas of representative bureaucracy call up the specter of Jacksonian patronage and corruption, might find the idea of active bureaucratic representation includes significant ethical conundrums that beg for resolution. Attempts to address criticisms of representative bureaucracy, particularly the active, advocative form that I suggest, first require that we know the roots of the concerns raised. As examined in a previous chapter, there are many reasons why some scholars reject the idea of bureaucratic citizenship, much less active bureaucratic representation. The disposition of anti-bureaucracy contains within its loose framework concerns ranging from bureaucratic tyranno-technocratic leanings to interference with the inner personae of public employees. Additional concerns center primarily around the potential uses or abuses of power that bureaucrats have by way of citizens and the government structure itself. The concerns over the representative role of bureaucrats stem primarily from worries about the potential misapplication of power that bureaucrats and bureaucracy possess. These concerns manifest in claims that bureaucratic power should be constrained for reasons of ethics based upon the law. However, I argue that the power that inheres in bureaucracy can be understood—contra the concerns of dispositional anti-bureaucrats—as something that can be (and often is) ethical.

Early theories of representative bureaucracy take as the primary starting point the assumption that symbolic representation leads to more active representation (Mosher

1978; Thompson 1976; Meier 1975, 1993; Keiser and Wilkins et al 2002). According to the theoretical framework and the empirical evidence generated by these and other scholars, when bureaucrats who are members of a gender or racial minority are present in a bureaucratic organization, there are positive outcomes for both members of those groups, as well as members of majority groups (Meier, Wrinkle and Polinard 1999).¹⁵⁸ What mechanisms provoke these positive outcomes is an area left underdeveloped within much of this literature.

Though tentative (Thompson 1976), the link between symbolic representation and positive outcomes is, as suggested by Keiser and Wilkins et al (2002, 562-563), active representation. The description of active representation used in much of this literature is that “the individual (or administrator) is expected to press for the interests and desires of those whom he is presumed to represent, whether they be the whole people or some segment of the people” (Mosher 1976, 12; quoted in Lim 2006). Active representation by bureaucrats is similar to bureaucratic advocacy (Lipsky 1980), bureaucratic stewardship or citizen administration in that active representation entails bureaucrats speaking for others or allowing others to speak through them (Cooper 1991).

Key to the arguments of Rawlsian justice as fairness and those of deliberative democrats is the idea that all citizen (participant) voices have a place in deliberations over public policy and its applications. As Young (2000) makes clear:

In the deliberative model, democracy is a form of practical reason. Participants in the democratic process offer proposals for how best to solve problems or meet legitimate needs, and so on, and the present arguments through which they aim to persuade others to accept their proposals. Democratic process is primarily a

¹⁵⁸ See Lim 2006 for a summary of the most recent scholarship on the issue.

discussion of problems, conflicts, and claims of need or interest. ... Participants arrive at a decision not by determining what preferences have the greatest numerical support, but by determining which proposals the collective agrees are supported by the best reasons (2000, 22-23).

Under circumstances, that Young (2000) and Warren (1996) freely offers are ideal only, all participant voices would be present and available for deliberation. However, because of the difficulty and contingency that democratic government entails (Young 2000 16-17) and (as suggested by the scholars of representative bureaucracy) because of racial and gender barriers to participation that continue to plague democratic government, citizen voices must often be transmitted into the deliberations by representatives.

Under ordinary theories of citizen sovereignty and citizen directed legislation, legislators would be the direct representatives of citizens in the policymaking and policy implementation process. However, as is well known from the policy-making literature and elite-centered democratic theory (Dahl 1971; Held 1996; Przeworski 1999), citizens' values sometimes escape representation by legislators. Instead, bureaucrats fill in the representative lacunae left by legislators through speaking for those citizens whom they represent either symbolically or through active representation of those citizen values they see as left out of the deliberative process.

Acting as representatives of their citizen clients, bureaucrats bring to the deliberative setting the values and positions of persons who, because of either structural (race or gender bias) or self-selection (the high costs of citizen participation) barriers, cannot participate in policy discourses. As has been made clear, the expert, specialized discourses of much policy making debate is prohibitive of full or even partial citizen

participation (Warren 1996, 46). Consequently, when acting in their professional capacity, bureaucrats, endowed with the specialized vocabulary necessary to participate, as well as physical access to the debates, and motivated by the desire to see that their clients' (vis-à-vis themselves as in the case of purely symbolic representation) positions are represented, serve as the most proximate representatives of citizens in deliberative settings on complex policy issues.

The actively representing bureaucrats bring additional value to the deliberative efforts that citizens themselves may not bring under ordinary circumstances. Specifically, bureaucrats offer their authoritative voice in policy discourse. Authority, even bureaucratic authority, as Warren indicates, “will serve to fill the vacuum [of direct participation] in any conceivable deliberative democracy” (1996, 46). That the use of this authority to facilitate the production of a deliberative democratic situation is ethical is the problem to which I now return.

Grant (2006) makes the argument that even in situations of power asymmetries, uses of power can be legitimate if the intentions behind the use of power are good—themselves motivated by legitimate ethical principles. The three primary criteria of power application that Grant identifies as potentially legitimating the use of power as ethical include the legitimation of purpose, the legitimacy of voluntary responsiveness, and the effect of the use of power upon the character of the parties to the situation (Grant 2006, 32). While each of the concerns that Grant poses regarding the use of power are important for the bureaucratic context, that the purpose of the use of power is guided by

the desire to seek normative goods—those goods of social justice—is most important here. Grant offers that:

Power is legitimate only to the extent that the parties involved are treated as being capable for moral agency on account of their rationality and capacity for freedom. People should not be governed as if they were beasts, though the exercise of brute force. Somewhat more concretely, this means that incentives, like other acts of power, can be judged by whether they serve a rationally defensible purpose, whether they allow a voluntary response or are based on freely given consent, and whether they accord with the requirements of moral character (2006, 34-35).

On the importance of moral character, Grant develops the position that the motivation of persons to realize ethically defensible ends lends a more credible and trustworthy position to those who are capable of deploying power over others. In the realm of bureaucratic advocacy, even though bureaucratic advocacy of a citizen's position may entail the interpretation of law beyond conventional boundaries (something that is, technically, wrong), advocacy of citizens' interests is ethical if done for selfless, reasonable and defensible reasons. Likewise, bureaucratic advocacy is not wrong if done as a means to fulfilling Rawls' second principle of justice. Alternatively, when the institution of administration attempts to abide by the principle of justice as fairness, bureaucratic advocacy is democratically defensible. To elaborate:

The natural distribution [of talent] is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. ... But there is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to share one another's fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit (Chambers 2006, 85; Rawls 1999a, 102).

Under the strictures of the anti-bureaucracy disposition, all bureaucratic interference in direct implementation will be wrong—even if done for the “right” reasons. However, this perspective denies the possibility that there could be ethical bureaucratic behavior in most ordinary circumstances. Even in situations where laws are specified completely at a particular time, the changes in both historical circumstances and the population of the nations means that in order for law to be implemented with the needs of fairness and currency in mind, there must be “real-time” adaptations. The legislature is not the place for this, the bureaucracy is. In the strictest terms of the disposition of anti-bureaucracy, the application of law beyond the specifications of the legislative process—even if it directly facilitates the continuation of the state itself or promotes the norms of full democratic inclusion—is an unethical use of bureaucratic influence and power.

Not only is this position untenable in the context of modern states, but it fundamentally misunderstands both the role of bureaucrats vis-à-vis the state and their clientele. As regards the state, bureaucrats are obligated to act within both the norms of their professions and the limitations placed upon them by the constitutional oath they must take as a condition of employment. Ethical uses of bureaucratic power in the name of the state includes defense of state actions to citizens and the use of such power to advocate to legislators the necessity of including, into deliberations over and the letter of the law, the needs of a marginalized population yet not represented. That bureaucrats use the power of their position to advocate further the national interest or to advocate for

a fuller conceptualization of the public in the case of the public interest stands to redeem their use of power as ethical by virtue of defensible intentions.

This is not to suggest that bureaucrats must be Kantian moralists defending a universal categorical imperative or even Mandevelian beekeepers (Grant 2006). In acting with good intentions in their use of the power encompassed in their position, we can accept that bureaucrats who advocate for the limited interests of their clientele, even if the interests of their clientele are their interests, are acting rightly by the ethical standards of power. In the case of a plural democracy whose policies must be oriented to a democratically defined and defensible public interest, the active representation of citizens' limited interests as insertion of previously unheard voices in the deliberative situation is neither the sublimation of the full public interest nor the capture of the legislative process by juridical interests. Rather, as interests should be plural and multiple in democratically defensible deliberations about government policy and action, the active representation of interests is an act justifiable through the norms of democracy. Active bureaucratic representation that serves to facilitate democratic social justice through the continual performance of social activities that precede and include representation is an ethical use of power by bureaucracies in a plural democratic state.

Conclusion

The need for bureaucratic representation in a complex society opened to all through the ease of information access seems minimal at best, and at worst elitist. However, the prospects of democratic participation by all, particularly in the face of

information overload and the rising prominence of economic stability concerns over political participation needs requires the intercession of an intermediary force that is proximate to both citizens and the debate itself. Due to the complexity involved in the social manufacture of true representation through deliberation, this is impossible in the established channels of representation conceived of in theories of liberal civil society. True representation of citizens' interests requires the elaboration of a new discursive frontier that is always already present in the lives of citizens.

CHAPTER VIII

CONCLUSION: PRAGMATIC THOUGHTS ON IMPLEMENTING COMMUNICATIVE ACTION

Developed here is a theory of democratic legitimacy of the state that takes as a principle starting point the importance of state administration for the continuation of the state itself. I have attempted to weave together theories of democratic communication, bureaucratic representation, social justice, legal neutrality and bottom-up democratic control into one framework that provides justification for an expanded role of citizenship for bureaucrats and an expanded role for bureaucrats in the project of making citizens. As a theory of the state, it is much more expansionist than some may like, and indeed it has overtones that may suggest to some readers the usurpation of citizens' power over in the state by those that ostensibly work for and under it. I have developed a tale that gives to bureaucratic institutions the prerogative to treat citizens as more than instruments for achieving performance scores or the commands of legislators. The notion of the state here requires for its completion the notion that the state has a function—that it is more than a fictive organization of covert domination.

In arguing for the reassertion of state power, it follows quite consciously in the tradition of modernity of both Dewey and Habermas. I also follow Dewey and Habermas in arguing for the importance of communication for founding the legitimacy of the modern state. My reliance on these authors may seem, at times, too much and my analysis too little. To the extent that I have fully captured the intent of either author is

left to the judgment of the reader; I realize I may have provided too clipped a version here, to expansive a notion there. Nevertheless, I do hope that the connections made are at least provocative, if not clear. I confess that, from my perspective, at the end of this work, much more is left unclear than I had hoped.

A common complaint among scholars of public administration, when reading the works of political theorists (and even more philosophically inclined administrative theorists), is that there is little attention paid to the practical consequences of their work. Therefore, to avoid disappointment here, I will speculate on the practical consequences of the work as developed. Specifically, I will briefly describe what changes would need to occur to create and support a legitimizing function in the office of the ordinary “street-level” bureaucrat.

First and expectedly given the amount of time and effort that would be required for genuine communicative engagement, more personnel are necessary to staff the “line” positions in local bureaucracies in particular. In addition to more manpower in sheer number of bodies and hours, a different ethos of service must reign within the offices of these officials. As Denhardt (1986) and others have pointed out, bureaucratic employment is often, and unfortunately, seen as “work of last resort”-- the best and the brightest do not occupy the positions of state office. The regression towards mediocrity in the office of the state simply will not do.

In order for citizens and citizen-bureaucrats to engage communicatively, the communicative competence of bureaucrats must be great. This, I believe, requires the installation of citizens of exceptional education and experience into office. Yet, in order

to attract such employees to the state as an employer, certainly the second requirement needs attention. In addition to workers, additional financial resources are necessary. In order to attract ideal employees, the public sector must outpace the private sector. Since in America, the opportunity to rely on prestige (as one may do in France (Rohr 1995)) is not possible, the necessity of reliance of money becomes paramount. Pecuniary benefits however, will only go so far. We must, to echo the recommendations of Cooper (1991,1998), Denhardt (1986), Frederickson (1995), Kettl (2002), Rohr (1995), Terry (2003), and Waldo (1984), bring into compensatory scheme of the public bureaucracy, the warmth of appreciation from one's well-served clients. In short, the attitude towards and within government would need to change. There must be a resurrection of politics as participation, not pass-time for partisans.

The problems of mass democracy is its almost inevitable deficiency of institutions for vital participation in the community's public life. Responsibility for something one takes no active part in is difficult to arouse and maintain. We are becoming a nation addicted to spectator sports, and politics bids fair to be just another one of them. Lack of personal participation does not prevent the fans from being rabid partisans, a fact that has been known since the Greens and the Blues of Byzantium (Long 1962, 189).

This brings me to a final recommendation—not that modes of participation be democratized alone (*pace* Mouffe (2000)), but that participatory space be democratized (*pace* Goodsell 1977, 1988). That space must be democratized, suggests that the institution of bureaucracy be given another look. As bureaucratic power theorists such as Rourke (1986) suggest, bureaucracy and its affects pervade every place and touch everyone. Bureaucracy in the modern state, which is most democratic in its consequences and its symbolic importance, reaches out to and is accessible to, the many.

In sum, bureaucracy is the institution for modern democracy. To that end, we must make greater efforts to recognize and grasp the representative potential indwelling in the offices of bureaucrats (Grin and van de Graaf 1996).

Nevertheless, these recommendations are nothing new. The resolution of problems through the application of more money and/or manpower is a common solution trotted out that, in many cases, does not address the heart of the issue. When the heart of the issue, however, is whether the government itself has a claim to be the justified or “right” authority to wield coercive power over a people, failing to address the significant issue is unlikely to be a tenable solution for long. A government that does not re-address the problems of its own legitimacy from time to time will not be a government for long.

The problem that Dewey describes in *The Public and Its Problems*—the eclipse of the public—is not resolvable through the application of money or manpower from external sources, solutions come from within. In addition, to solve the problems of a democracy from within, means that citizens of all walks must turn towards each other with the objective of understanding one another fully—mutually, of reaching *einverständnis*. This process of turning towards mutual conversation cannot occur without the incorporation of the administrative apparatus of the state, or the joint between the system and the lifeworld.

As Habermas describes in his critique of Luhmann at the end of *Legitimation Crisis*, in the state propelled toward the goals established by the rationally discoursing

public, there must be a balance in the administration between the task of providing economic steering and of motivating the production of the generalizeable interests.

...The scope of action of the administrative system [is] limited on *two* sides: in steering the economic sector, by the parameters of a property order that it cannot change; in creating motivation, by the independent development of normative structures that are irreconcilable with the suppression of generalizeable interests (Habermas 1973, 135).

The administration must always already set the course and steer the way through the problems of legitimacy that may emerge. That is, the administrative apparatus of the state must be intimately involved not only in “proving” itself the right (legitimate) authority, but also in determining rightness to begin with. The administration is responsible for the development and articulation, as well as the implementation and evaluation, of the policies of the public interest. Such expansive goals are attainable only if the full public is involved in the conversations on both ends, if citizenship in a democracy takes on a revived dimension of meaning.

From this vantage here at the end of the work, it seems we are left here with an irresolvable problem: in order to fix the legitimacy problem in government, bureaucrats must be empowered to engage communicatively with citizens, but without an improvement in the perception of legitimacy on the part of citizens, citizens will not be motivated to engage communicatively with bureaucrats. Within this work, I have attempted to circumvent this circular problem by redefining citizenship in such a way that the dichotomy of citizen-bureaucrat is resolved in favor of a unitary theory of

citizenship that takes seriously the notion of citizens' sovereignty as exercised through the multiple channels of control in the modern state.

Much has been made of the responsibilities of citizens to one another in my examination of communicative action, likewise I have said of the responsibility of bureaucrats to citizens. However, the responsibilities of citizens to bureaucrats—of citizens to the rights of the state—are still under-defined. In order for the project of legitimation to have any meaning, there must be clear obligations of citizens to the state. Long (1962) in *The Polity*, makes these obligations clear:

Perhaps the first task of securing citizenship is the development of the sense of *moi commun*. There have to be citizens who feel responsible and they have to have something to feel responsible for. ... Quite clearly in the class of citizen we have a wide range of roles and attitudes. There are those who are in active contention to man the public offices, and of these there are those who are merely birds of passage as well as those who in a sense make a profession of public life. The differing levels of government provide different theaters of action, with better or worse critics and media of criticism, wider or narrower, informed, or uninformed audiences. ... While it is necessary as a means of enforcing responsibility on the active citizens who conduct the government that all should have the right of voicing their grievances in a compelling manner. ... the citizen may not only be voicing his demands as a consumer of government policy, but in addition, showing responsible concern for the government in terms of some notion of a common good (1962, 184-189).

In short, the obligation of citizenship (for those active and passively involved) is to consider one's relationship with the whole, the public interest *in toto*, when voicing grievances against the state. In a democracy where citizens strive together for the public interest-- communicatively in a forum accessible to all-- to the extent that policymaking and policy enforcement occurs with this public interest in mind, we can call that state legitimate.

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VITA

Name: Sara Rene Jordan

Address: Texas A&M University, Department of Political Science, 2010 Allen
Building, TAMU4348, College Station, TX. 77843-4348

Email Address: sjordan@politics.tamu.edu; sara.jordan@gmail.com

Education: B.A. Interdisciplinary Social Sciences, The University of South Florida,
2002
Ph.D. Political Science, Texas A&M University, 2007.