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"Our Usable Past": A Historical Contextual Approach to Administrative Values

A Senior–Junior Academic Exchange: Bringing Public Law Back into Public Administration

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In responding to Professor Lynn's criticism that the field of public administration has been insufficiently attentive to law, this article offers an alternative perspective on the source of administrative legitimacy. Leonard White understood that public administration is shaped by its broader context. It does not assert its own values but, in an effort to maintain legitimacy, reflects the political and cultural values of its environment. In White's time, the extraordinary challenges that the state faced, and its subsequent transformation, demanded a management capacity that previously had not existed. While the role of law as a formal means of control is generally accepted, it must take its place with management and other administrative values in the exercise of legal discretionary behavior. Asserting law, or any other single administrative value, as dominant undercuts other values that act as sources of legitimacy.

First, a conundrum. In the accompanying article, Laurence E. Lynn worries that the field of public administration has lost its way, and is in need of reframing. In another recent assessment, Steven Kelman (2007) agrees. But their views of the problem, why it occurred, and how to fix it could not be more different.

Lynn worries that public administration took a wrong turn by following Leonard D. White, and focusing on management, rather than the example of Frank J. Goodnow, who argued for grounding the field in law. As a result, public administration became unmoored from constitutional values, swept hither and thither by the management fashions of the day. Thus, the scholarship and practice of public administration lost its fundamental source of legitimacy. The solution, Lynn says, is to set aside self-proclaimed values such as performance, and return to the rule of law as the dominant framework for the field.

Kelman worries that the field took a wrong turn by abandoning the example of White, and becoming obsessed with controlling administrative discretion through constraints. As a result, public administration moved from mainstream organizational studies into an intellectual ghetto, while ignoring the main concern of the public, which is improved government performance. This failure undermined the legitimacy of the field, promoting "a general view that anything having to do with government organizations—including research about them—is second-rate" (Kelman 2007, 227). The solution, according to Kelman, is to set aside the overriding concern with constraints and rules, and make the study of performance the dominant framework for understanding the field.

What does it tell us when two of the senior figures can consider the source of the field's legitimacy, and arrive at not just different, but opposite, conclusions? A simple response is that one is right and the other is wrong. But it is the competition of values that is most telling. A central feature of the intellectual development of public administration is an ongoing debate about values. Some scholars advocate for one value to dominate over others, but they are usually rebutted by others who, in turn, advocate values of their own. Others take the more catholic view that multiple values are relevant guides to scholarship and practice, and part of the complexity of public administration is finding an appropriate balance. Leonard White falls into the latter category, elucidating a wide range of values as fundamental to American public administration (White 1955, 23–25). Advocates of public participation, expertise, neutrality, flexibility, decentralization, and a legislative-centered administration can all draw from White's list of fundamental values to support their perspective.[1]

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The lack of an administrative orthodoxy strikes some as problematic, limiting the development of a coherent intellectual framework. How to fix this? Lynn and Kelman offer competing solutions. This essay asks a different question: Why do a handful of administrative values remain in an ongoing and sometimes uncomfortable struggle? The answer, and the central thesis of this essay, is that multiple administrative values are pursued because they represent a means by which a field that is short of legitimacy seeks it from the broader political environment. The relevance and evolution of those values can best be understood by exploring the historical context in which public administration has developed.

To understand how the values represented in administrative actions and scholarly analyses link to legitimacy, we need to understand the historical context, and the broader values this context prioritizes. To do so, we are guided by White's contextual approach to administrative history. White's contribution to public administration has been forgotten, maligned, and simplified. He is generally cited in a cursory fashion, as the author of the first textbook of public administration (Weber 1996). Others have narrowed White's contribution to the assumption he makes in the preface to the first edition of his book, in which he argues that administration should build from the field of management, rather than law.[2] While Lynn's article is a welcome effort to redirect attention to White, it remains focused on that assumption.

By using White as a guide, this article has a secondary goal of offering a fuller understanding of his work (Roberts, 2009, has a similar goal). A deeper reading of White's work illustrates the broader theme that guides this essay, and an approach to understanding administration that the field could usefully incorporate, which is, "Every system of public administration is the product of many influences. Its form and content reflect its historical origin; existing patterns are a composite of practices and procedures both ancient and contemporary. No administrative system can be well understood without some knowledge of what it has been, and how it came to be what it is" (White 1955, 13).

This article first illustrates the relationship between the expression of values and historical context by reexamining the contribution of White. Next, the article assesses the threat to law that Lynn identifies, distinguishing between law as a formal framework (which is widely accepted), and as a value to shape discretion (where it competes with other values). The essay concludes by arguing that law, by itself, will not provide administrative legitimacy.

The Search for Legitimacy: A Historical Contextual Approach

Using White as an example, this section makes the case that the values of public administration reflect developments external to the field, rather than a conscious choice internal to the field. The issue of administrative legitimacy has been widely debated, often in the context of law and the Constitution (see *Public Administration Review* 1993, no. 3). Warren contends that the "fundamental problem is that legitimacy has been interpreted to mean so many different things in our field that it has lost any common or useful meaning" (1993, 251).

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While not pretending to offer a comprehensive definition, this essay follows Rourke (1987) in asserting that administration is legitimate when it is accepted by its subjects as being rightly exercised.

White's Understanding of Administrative History

Public administration scholars have conceptualized, interpreted, implemented, and fiercely debated a number of values, as part of an effort to make the profession appear relevant and consistent with changing times, and new challenges for governance. The various administrative values that we think of today—such as equity, performance, and participation—are a reflection of a historical effort to adopt values viewed as important by the wider environment.

The stateless origins of U.S. administration, along with a national creed that is inherently suspicious of government, have encouraged this search for legitimacy (Huntington 1981; Stillman 1999). In such a context, the field cannot convincingly assert legitimacy on its own terms, or apply its own values. Public administration, therefore, is essentially a reactive field, a condition amplified by the close relationship between practice and scholarship. Environmental pressures on practitioners shape new reforms or programs, which are discussed in a stylized fashion by scholars. The cyclical nature of reform sees different values represented at different times, fostering the ongoing debate over values (Kaufman 1969).

To ignore the influence of the environment is to adopt what Roberts describes as an "internalist" approach, "in which the process by which ideas evolve is characterized as a dialog within the academic community alone" (1995, 304). The work of White offers a contrasting approach, emphasizing historical context. Indeed, Lynn begins his reexamination of the founding of public administration by quoting White on this point: "The student of administration must … concern himself with the history of his subject, and will gain a real appreciation of existing conditions and problems only as he becomes familiar with their background" (2001, 144). This quote is not idiosyncratic, but a constant of White's work. Again and again, White emphasizes the essential importance of the relationship between historical context, contemporary challenges, and administration.

Weber (1996) identifies the central theme of White's *Trends in Public Administration* as being that "any system of public administration inevitably reflects its environment" (White 1932, 22). It is also the central theme of the introductory chapter of the first edition of *Introduction to the Study of Public Administration.* White argues that "the role of administration in the modern state is profoundly affected by the general political and cultural environment of the age" (1926, 7). Applying this logic, White (1926, 9) argues that the growth of the state accorded administration a new importance. World War I showed that democracies could not afford to be any less organized than autocratic opponents. The pursuit of new social programs created constituencies that cared about implementation. Science and technology were transforming administration, with the implication that "[f]ew of the major tasks of modern administration can be carried out without the constant support of the technician" (1926, 14).

In later editions, White's preoccupation with the changing demands on the state becomes the main focus of his prefaces. The second edition starts by noting how the crises that had struck the nation necessitated new approaches to management. "As a nation we are, however, slowly accepting the fact that the loose-jointed, easy-going, somewhat irresponsible system of administration which we carried over from our rural, agricultural background is no longer adequate for present and future needs" (1939, viii). In the third edition, he considers the aftermath of World War II, arguing that "one foundation for the future of American democracy is a sound administrative system, able to discharge with competence and integrity the tasks laid upon it by the people. The present system is far in advance of that which sufficed in 1925, but its improvement has no more than kept pace with the added responsibilities heaped upon it" (1948, vii; see also White 1945, 1). In his final edition (1955), White examines changes such as the Administrative Procedure Act, the Hoover Commissions, and the growing role of the military.

White's other main intellectual achievement is the four-volume analysis of the historical development of administration in the United States. Across these volumes, White notes how presidents, including founding fathers, were forced to pragmatically amend their ideals of the role of the state and the application of administrative machinery to the demands they faced (Roberts, 2009). White's historical work provides a keen sense of how a state develops, including the role of formal institutions, culture, and contemporary challenges and politics. For example, in *The Federalists,* White says that the development of public administration "can only be understood in the light of prevailing values and the events, personalities, and institutions from which they are derived" (1948, vii), and that the "true nature of public administration is found in its historical context related to the present situation" (61).

White in Historical Context

The implication of White's view is that if any administrative value, such as law, is not dominant, it is because the broader environment has demanded other values from administration. White was not only a student of history; he, along with Goodnow, was shaped by it. The late nineteenth and early twentieth century was a crucial period in American administrative history. The idea of administration as a profession and scholarly endeavor arose in tandem with an extraordinary renegotiation of the role of the state and "the gradual emergence of permanent government" (Lynn 2001, 147). "National administrative expansion called into question the entire network of political and institutional relationships that had been built up over the course of a century to facilitate governmental operations" (Skowronek 1982, 35). Such a backdrop shaped the intellectual origins of public administration. Contrary to later simplifications of early public administration scholarship, the founders of the field sought to balance the greater professionalization and delegation demanded by the growing state with more traditional concerns about citizen representation and democratic control (Lynn 2001).

Even within this general period of administrative change, there are significant differences in context, differences that underline that Goodnow and White were not contemporaries, but members of a different generation. Goodnow was born in 1859, and his lasting contributions are primarily found at the end of the nineteenth century. White was born in 1891, with his career spanning the 1920s to the 1950s. Gaus argued that in order to understand White, we must consider "the character of public affairs in this country and the world generally during the years of his active work … Throughout his professional life, our country was in urgent need of transforming its means of public housekeeping from those more appropriate for a predominantly agrarian earlier society to those more helpful to a rising urban interdependence" (1958, 231). The first half of the twentieth century saw, in relatively quick succession, two world wars interspersed with a depression. This period caused White, and most Americans, to reconsider the instruments of government built to serve an earlier age. What separated Goodnow and White was not just time, therefore, but profound societal changes, new expectations of government, and the rise of management as a field. Any effort to draw parallels between the two must take these differences into account.

What separated Goodnow and White was not just time … but profound societal changes, new expectations of government, and the rise of management as a field. Any effort to draw parallels between the two must take these differences into account.

What is remarkable about Goodnow's work is how little had gone before, giving him a credible claim as "the first effective founder of academic public administration in the U.S." (Van Riper 1983, 484). When Goodnow wrote, the United States was beginning to implement civil service laws. But this was applied only to a small fraction of the federal service, and was opposed by political parties (Skowronek 1982). Spoils remained the norm. By defining administration as a separate (but connected) process from policy making, Goodnow provided a logic for treating the field of administration as its own entity, opening the door for others who could offer alternative views about the principles that should guide the field (Stillman 1999).

While Goodnow paved the way for all scholars who wished to study the execution of policy, he did not determine the perspective they would take. Gaus reminds us "how much hacking away at a jungle has to be done at such an early stage in the study of and reporting on a new field" (1958, 233). White took on this role. While his textbook is generally regarded as the first of its kind, White did not offer much new knowledge, but instead coherently organized existing perspectives, including the views of the Progressives, scientific management, civil service reformers, and classical management proponents (Gaus 1958).

When White wrote, the civil service still did not dominate government at all levels, but public opinion was moving "directly in the direction of merit and away from the stronghold of spoils" (White 1926, 468). In addition, a variety of influences were prioritizing efficiency as a value. These influences included presidential commissions, such as the Taft-era Commission on Economy and Efficiency; the work of the Progressive bureaus of municipal research; and representatives of private business, such as the U.S. Chamber of Commerce (White 1926). White saw public perception as focused on efficiency: "The wide publicity given to the rising tide of expenditure, the heavy burden of taxation, and the dramatic efforts of the

national administration in favour of economy, have all emphasized a demand for greater efficiency" (1926, 11).

White has been criticized for arguing that the field of administration should look to management rather than to law to inform its practice. But when Goodnow wrote, he could scarcely argue for management because such a choice was not possible. There was no field of management. The Harvard Business School was not established until 1908, the Academy of Management in 1936, and the American Management Association in 1923. Goodnow, trained in both political science and law, argued for the latter, doing so at a time when the judiciary was expanding its power to aggressively fill what it saw as a void in governance (Skowronek 1982).

White did not see his work as contradicting Goodnow, but as focusing on an emerging body of knowledge that had not yet established itself relative to the traditional emphasis on law (Storing 1965). Even though White was a student of history, most of the practical and scholarly sources that influenced his conception of administration were ones that arose after the turn of the century, and therefore were not available to Goodnow. White himself makes this clear: "Frank J. Goodnow began the first systematic study of the field from the background of administrative law, an approach already long established on the European continent. The study of administration from the point of view of management began with the bureaus of municipal research and was first systematically formulated in the 1920*s*" (1955, viii).[3]

Another contextual factor that White was acutely aware of was the lack of concerted attention to management in U.S. institutions. For example, in the 1920 reclassification of the federal civil service, many of the senior nonpolitical positions were still described as "Chief Clerks." White believed that the new demands on government required a more professional career service with a better knowledge of administration. In *Government Career Service,* he argues, "Unless we have assurance of a better civil service than that to which we have been accustomed, it is perilous, to say the least, to embark upon a broad program of social reorganization which rests primarily upon the activity of government" (1935, ix). Without competent administration, government could not be effective or legitimate. White's study of the federal civil service led to "a conviction on my part that we cannot delay the reconstruction of our public service in the light of the new world which is rapidly taking shape … The laying of foundations for an administrative corps in harmony with the prevailing structure of American life and government I believe to be the most important immediate task" (1935, x).

Reassessing White's View of Law

White does not deserve to be typecast as the father of anti-legalism. Given the context described earlier, it was natural that White argued for the need to expand the knowledge of management rather than law in the preface of his textbook. But once we read beyond the preface, we see a more balanced understanding of the role of law, not an anti-legal tract.

It is fair to note that White is perhaps most critical of law in this first edition, arguing that administration and administrative law are "adjacent fields" (1926, 4). But White also acknowledges law as the framework within which administration operates, and devotes chapters to rulemaking authority and the role of the courts. Indeed, White is more attentive to law than most contemporary textbooks on administration. This mixture of antagonism and attentiveness is, again, a reflection of the historical context. The attentiveness reflects the fact that law remained the dominant scholarly approach to administration up to that point (White 1926, 446). But as managerial ideas were significantly reshaping administrative practice, White saw the need to make the case for the study of administration from a perspective other than law. As management became better established, later editions find White less concerned with separating law from administration. By the fourth edition, White argues that the first fundamental characteristic of American public administration is that it "is based on law and public officials are responsible, in accordance with the rule of law, to the ordinary judicial courts" (White 1955, 23). White recognizes that all administrative authority is derived from and limited by legislative and judicial sources. He does not assert authority independent of those sources, though he is concerned that they often fail to provide adequate discretion.

White's view of the practical role of law in administration was also shaped by the context of the time. In *Government Career Service* (1935), he gives more detailed consideration to this issue than we find in his textbook. Here, White's mixed feelings about lawyers are clear. On the one hand, they are important and deserve "special consideration" because they "are always found at the right hand of the administrator whose actions must be legally defensible. A lawyer, therefore, sits close to the seat of administrative authority … Policy may have to yield to constitutionality, and the lawyers prescribe. On the other hand, it must be said that the training of the lawyer, based on precedent, and looking backward rather than forward for guidance, is not a training which is suited to make an ideal administrator" (1935, 46).[4]

The problem, according to White, is not that law is inappropriate for government, but that "legal education has not given emphasis to the proper preparation of lawyers for the public service; indeed, there is strong sentiment among some law faculties that no special preparation is needed or useful. This view cannot be accepted in the light of modern conditions; and if the law is to provide some of our administrators it is of great importance that their preliminary training should be broader than mere private law learning" (1935, 47). Here, White is not rejecting the field of legal studies, but berating it for a lack of attention to administration, and inviting it to do more. While Lynn properly calls on public administration programs to take account of law in their training, White did not have this option because of the absence of widespread professional training in public administration at the time. For the career man, White sees the main sources of professional education as learning on the job and in-service training. Contrary to what we might expect, White insists that a grounding in law is essential for both forms of education.[5] In this respect, White shares Lynn's concern that administrators lack basic knowledge in public law, and recommends that formal training is needed.

In his professional life, White was very much an advocate for the rule of law. He devoted much of his career to arguing for the adoption of merit-based civil service laws to structure public employment, which Lynn notes is one of the crucial functions of law in public administration. White sought a legal framework that would

minimize the role of informality and partisanship, thereby improving the competence of government to meet the demands of the time.

Assessing the Threat to Law

As we move from White's time to the present, how has the rule of law fared relative to other administrative values? Professor Lynn makes the case that law has faced a hostile audience within public administration, and has been given less attention than other values. It is true that core classes in public administration training should better address law. The recent textbook of Hill and Lynn (2008) is just one excellent example of how to do so, and Rosenbloom and Naff (2008) point to others. But students generally have the opportunity to take specialist training in law. A recent survey of accredited master of public administration programs found that 88 percent of them offer a course with "constitutional," "law," or "legal" in the title, while 40 percent offer joint degrees with law (Rosenbloom and Naff 2008). The survey found, however, that relatively few students took these classes. If there is inattention to law in professional training, it seems to be largely a function of a lack of demand among students, rather than an inadequate supply of appropriate classes.

In other ways, law stands on a stronger base than other administrative values. Legal scholarship on administration can point to a constitutional justification that other administrative values cannot (Rohr 1993, 246). The argument that White made for management is that its techniques are necessary to govern the contemporary administrative state. This is a contextual rather than a constitutional justification, and therefore requires greater elaboration (such as White's repeated references to the changing demands of the state) and is subject to greater contention. Compared to other administrative values, the rule of law is better established within the broader political culture. For example, even those arguing for management do not argue that we need to abandon the rule of law. At the same time, Lynn notes an anti-legal bias in such work. To account for this apparent contradiction, we need to make a distinction in how we treat law, recognizing the difference between law as a formal framework, and as a value set. As a formal framework, the rule of law has grown in practical influence and faces limited scholarly disagreement. It is in the exercise of discretion that we find an appropriate debate about the relative importance of legal values. The next sections take up this distinction.

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Law as a Formal Framework

We can categorize the influence of law on administration in two ways: as a legal framework, and as a value set. This is an important distinction, allowing a nuanced understanding of how law is relevant to public administration. White defines law as "the immediate framework within which public administration operates, defining its tasks, establishing its major structure, providing it with funds, and setting forth rules or procedure" (1932, 11). Law—the Constitution, legislation, court decisions, rulemaking, and other aspects of administrative law—provides the formal rules of the game, creating the legal zone of discretion that administrators work within. As this legal framework expands, it generally minimizes discretion in the name of explicitly guiding behavior.

Law as a formal framework is intended to prevent the corruption, loss of rights, personalized authority, and other abuses that arise in insufficiently developed legal regimes. The principles of this approach are to be constitutionally competent, avoid iillegal behavior in the exercise of authority, be broadly aware of relevant laws, and interpret law in a reasonable fashion (Lee and Rosenbloom 2005). This advice is not terribly contentious, although it is fair to note that it is not deeply explored in public administration training, or central to much scholarship.

The practice of administration is not inattentive to the demands of law, because it cannot afford not to be. While practitioners might complain about laws, this does not imply disobedience. Lynn quotes David Walker's fairly mild commentary that the role of the judiciary has expanded and added to existing regulatory burdens as evidence of the anti-legal bias. But the substance of Walker's comments is correct. In fact, there is ample evidence of expanding judicial oversight over the bureaucracy, declining claims of immunity and increased risk of individual liability for administrators, and the growing legal complexity of the world administrators live in (Roberts 2008; Rosenbloom 2003; Wilson 1989). Courts are more willing to interpret legislative intent, override the discretionary decisions of executive branch officials, and recognize the standing of parties suing the government, thereby offering additional means by which interest groups can overturn administrative interpretations. The recognition of new rights by the courts, and the provision of new entitlements by the government, has also broadened the formal legal framework that bureaucrats must be aware of and obey (Handler 1986).

The growing influence of the courts on administration has created a more uncertain and complex legal framework for administrators to work within. This influence has grown, rather than declined, since White first wrote. Administrators are less certain as to the limits of their discretion, and when it may be second-guessed. The expansion of the formal legal framework also has had the effect of making bureaucracy more risk averse, as legal challenges are both cost- and time-consuming. As a result, lawyers have become increasingly important to bureaucracies (Wilson 1989). Expression of concern about these effects is based on an empirical reality, and is not prima facie evidence of an ideological bias against the law.

While there are few advocates for extralegal behavior, existing formal frameworks have come under challenge. Reformers argue that laws are outdated, and call for alternatives in the name of reduced transaction costs and greater performance. But the alternative legal frameworks proposed are often implicit, vague, or inattentive to risks. An example is the creation of the Department of Homeland Security, where the George W. Bush administration proposed eliminating many civil service protections, but did not specify what the new system would look like (Moynihan 2005). Such efforts to change the rules governing the core public sector are usually met with strong resistance. In the case of the Department of Homeland Security, public sector unions successfully urged the courts and Congress to reassert a framework similar to the old one. A more pressing challenge to formal frameworks is the privatization of public tasks to less regulated settings. An example is the creation

of the contemporary welfare market, which devolved administrative authority to states, localities, and private and nonprofit providers, while weakening legal oversight of the process. The new system has often seen a loss of basic procedural values and rights, justified by performance, and motivated by profit (Soss, Fording, and Schram 2008).

Law as a Discretionary Value

Lynn argues that law must be more than a legal framework. "[P]ublic administration's teachers and practitioners must 'bring the law in' by exercising the habit of 'thinking institutionally' about the rule of law. Thinking institutionally … means more than knowing the rules of the game: that is, the rule of law as legality and constraint. It means respecting the game you are playing: the rule of law as principle … [It is] thinking [that] is infused with value." Thinking institutionally demands that actors modify their behavior to be consistent with institutional values (March and Olsen 1995), and Lynn identifies law as a source of values. While formal frameworks shape the zone of administrative discretion, law as a value seeks to influence actions taken within that zone. Where law is vague or silent, officials should behave in way that is consistent with judicial values. This perspective is more contentious than law as legal framework, and the arguments against this approach are summarized here.

Value trade-offs. Advocates of legal values frame them positively—for example, as equitable treatment, due process, and the protection of individual rights (Rosenbloom 1983). But excessive attention to any given value is likely to result in the displacement of others. Rosenbloom (1983) notes that legal values militate against values such as economy, efficiency, representativeness, responsiveness, and political accountability. To this list, we could add speed, flexibility, participation, technical expertise, and innovation. An administrator who is primarily focused on legal values may become so attentive to rules that mission and tasks suffer, or efforts to engage citizens in creative problem solving and tailored solutions are restricted (Handler 1986). Administration may become ossified, unresponsive to changing circumstances.

If legal values dominate other administrative values, what sort of managers might we expect? We find a clue to the answer by looking at cases in which judges intervene to effectively take on the role of administrators. On the positive side, judges are willing to fight for the rights of politically unpopular and powerless groups, regardless of the cost, and often in defiance of legislative intent. But a focus on individual rights and statutory intent can lead to a lack of attention to other valid concerns, such as feasibility, policy design, fiscal discipline, allocative efficiency, and technical efficiency (Breyer 1993; Wise and O'Leary 2003).

The ambiguity of law. Through a mixture of strategic ambiguity and poor drafting, Congress often provides law that is unclear and vague. When law itself is ambiguous, and its underlying preferences are conflicting, the possibility that law can offer a consistent guide to discretionary behavior is lowered. In addition, laws governing the delivery of services may be at odds with judicial values of individual rights and due process. In such cases, administrators are hard-pressed to reconcile the contradiction between the law and legal values. For example, some laws communicate nonlegal values, such as performance (e.g., the Government Performance and Results Act), increased discretion (procurement reforms), or reduced process (e.g., the Paperwork Reduction Act). The Personal Responsibility and Work Opportunity Reconciliation Act communicated to administrators that putting individuals to work was the policy priority. Empirical evidence shows that administrators got the message, to the point that they did not offer citizens a full understanding of their rights (Shaw et al. 2006).

The question, therefore, is not just how do administrators apply legal values, but what do legal values really mean? Within the field of legal studies, there has been a long-standing critical literature that emphasizes the ambiguity of law. This approach can be traced to Chief Justice Oliver Wendell Holmes, who pointed to the variety of nonlegal factors that shaped legal decisions (Kelman 1987). Critical legal studies argue that the law rarely asserts binding constraints on individuals, but instead provides interpretative frames.

Given the ambiguity of law, we should recalibrate our understanding of the effects of law as a source of values. Law will be interpreted in a myriad of ways consistent with interests and circumstances, and will not lead to a consistent standards and behavior. There is perhaps no better example of the ambiguity and political nature of law than the dubious legal theories advanced by Bush administration lawyers (Pfiffner 2008). This administration did not ignore the rule of law. Instead, it carefully built an alternative legal framework to justify the role of the president in the war on terror. Vice President Dick Cheney brushed off criticism by pointing to the legal basis for contentious decisions: "We did it in a manner that I believe and the lawyers that we looked to for advice believed was fully consistent with the Constitution and with the laws of the land."[6] The law, more than other administrative values, provided justification for the most egregious of the Bush administration's excesses.

The function of law is to minimize discretion. Efforts to reduce the ambiguity of law imply more specific, more detailed, and restrictive formal guidance—in short, a return to law as a formal framework (Davis 1969). A stark representation of this claim is offered by Rosenbloom: "From a legal perspective, discretion is generally viewed as antithetical to the rule of law, potentially fostering tyranny and even evil" (2007, 35). Law, ultimately, is formal direction. It is at odds with discretion. An example: Legal values such as due process, transparency, and equal treatment are ignored by performance measurement systems. How to solve this problem? Both Rosenbloom (2007) and Wichowsky and Moynihan (2008) come to the same conclusion: A formal requirement is needed to measure legal values. This solution reflects the reality that the surest way to foster legal values is through formal rules that reduce discretion about what to measure.

Feasibility. A final concern with law as a source of values is the issue of feasibility. If public employees are not sufficiently attentive to law, how do we inculcate such values?

Can Law Provide Administrative Legitimacy?

Law should be the dominant administrative value, according to Lynn, because it is the formal, most reliable, and enduring legitimization of public administration. To be sure, public administration has faced challenges. But will a stronger emphasis on law restore legitimacy? A consideration of the contemporary

environment in which public administration is practiced and studied offers some reasons to think not.

To be sure, public administration has faced challenges. But will a stronger emphasis on law restore legitimacy? A consideration of the contemporary environment in which public administration is practiced and studied offers some reasons to think not.

Legitimacy for Practice

There can be little doubt that illegal administration is illegitimate administration. But infusing stronger legal values into administration is unlikely to make the public more respectful of the administrative state, for two main reasons. First, the public has mixed perspectives on the role of law, especially when it is exercised by bureaucratic authority. Second, as law is privileged over other values, it cuts off other sources of state legitimacy.

The distrust and unease with government in the United States is at least partly a reflection of the broader political culture, and emphasizing the rule of law is unlikely to override the concerns of the public. This political culture reveres the Constitution, and the idea that we live in a country of laws (Rohr 1993). But there is also a deep unease with the use of formal authority in U.S. culture, and a particular concern about bureaucratic use of power (Friedman 2005; Huntington 1981). For example, the expansion of rights in the context of the modern social welfare state invited a backlash: "[I]t is argued we now have too many laws and entitlements, too much procedure, too many lawyers and hearings, and too much litigation" (Handler 1986, 2).

Administrative law does not find its origins in common law or explicit mention in the Constitution, but is a relatively recent phenomenon justified through delegated authority (Lowi 1986; Warren 1993). The first regulatory agency, the Interstate Commerce Commission, was not created until 1887 (Friedman 2005). The constitutional legitimacy of administrative law is, therefore, a legitimacy once removed from the Constitution. In the popular mind, the public administrator is not in the room during the constitutional convention. The public exhibits impatience and distrust with the regulatory state—it is either too heavy-handed or asleep at the switch. It is unlikely that emphasizing the legal authority of bureaucratic actors will restore legitimacy, or reduce concern about undemocratic power.

In addition to public concerns about the rule of law, it is not unreasonable to assert that citizens care about values other than the law. Overall, we have a relatively poor understanding of what drives public views of the bureaucracy. Surveys confirm that bureaucrats are stereotyped as unresponsive and inefficient (Goodsell 1994). If we were to ask the public about the biggest problems of bureaucracy, it is not clear that insufficient attention to the law would be ahead of concerns about poor performance, or its disconnection from citizens.

White argued that reforms intended to improve efficiency arose because of the growing role of the administrative state, and the growing responsibility of the head of the executive branch (White, 1955 174).[7] In short, managerial values were justified as a functional response to the demands of the state. This same logic remains in contemporary debate. Recent decades have seen government criticized as wasteful and inefficient. These arguments were tied to a shift in the political mood marked by a neoliberal perspective on the appropriate role and capacities of market and government (Kelman 2007; Roberts 2008). This external political pressure pushed the field of public administration to increase attention to issues of performance and alternative approaches to service delivery. Elected officials premised reforms on the notion that the pursuit of performance provides government legitimacy (Moynihan 2008). For example, both the Government Performance and Results Act and the reinventing government movement explicitly pointed to the need to rectify public confidence in government as their raison d'être.

Lynn argues that inattention to the law is the cause of expanded judicial intervention. There is merit to this claim—administrators who violate their formal framework invite judicial attention. But the opposite is also true—the perceived constraints of laws and rules have led elected officials to create avenues to avoid these constraints. Third-party government has grown so dramatically at least partly because many elected officials want a workforce that is not governed by civil service rules, and a pool of citizens with weaker rights in their interactions with state agents.

Legitimacy for Scholarship

For scholarship, it is also unlikely that the legitimacy of public administration can be built on a legal perspective. One reason is the need to attend to the nonlegal values described earlier. Because the scholarship of a professional field is connected to practice, the pursuit of such values inevitably frames much of the research of the day.

In contemporary times, scholarly legitimacy is also tied to the standards of social science. Critics of public administration have argued that it has failed to offer strong theories and methodologically defensible research (e.g., Lynn 1982; Moe 1994). A common recommendation is to adopt methods and theories derived from economics. While some have criticized this trend, the field as a whole has been unable to ignore it. The creation of newer public affairs schools was partly the result of the perception that traditional public administration programs were characterized by "insufficient rigor and an affinity for institutional description rather than analysis of choice and action" (Lynn 2001, 146). These schools defined scholarly ideals (if not always practice) in terms of social science standards. Similar to traditional public administration, legal scholarship has been criticized as lacking rigor. As long as administrative scholarship is defined by the standards of social science, it is the normative and methodological framework of economics, and not law, that will form the ideal for intellectual training. The content of PhD training in top public affairs programs reflects this fact.

Conclusion: Rediscovering Our Usable Past

There is little doubt about the importance of legal frameworks. But as law seeks to influence discretionary behavior, it must compete with other administrative values. These other values may not draw from the Constitution, but that does not mean they are unconstitutional, or anti-democratic, or illegitimate. On the contrary, that they exist reflects a responsiveness to contextual demands to demonstrate

legitimacy in a democracy. Wise (1993, 261) suggests that the ultimate legitimacy of administration rests on its ability to offer a framework to manage between competing values and trade-offs. Regardless of whether one agrees that the competition of administrative values is desirable, it is a reality. Emphasizing law above all other values effectively downgrades other sources of administrative legitimacy.

The juggling of multiple values makes the lives of both administrative practitioners and scholars more complex. It may have limited the capacity of scholarship to define and build on core doctrinal beliefs in the way that economics has. But all social science disciplines, including economics, have become more fragmented over time. The reactive nature of public administration also creates a danger of ceaseless pursuit of the latest fashions (Lynn 2001). But strip away the faddish language of many reforms, and we see a remarkable continuity in terms of their underlying values (Adams 1992, 370). For example, the performance movement of today reflects the preoccupation with economy and efficiency of White's time. The concern with representativeness and social equity that characterized the New Public Administration was also reflected in the writings of the field's founders (Lynn 2001, 152). Efforts to create more participatory institutions have been ongoing from the origins of the American state, reflecting a deeply held "democratic wish" (Morone 1998).

Even with the relative permanence of administrative values, there is vigorous debate about their relevance, meaning, and application at any given point in time. Too often, the contested nature of ideas in one generation is forgotten by another (Lynn 2001). We need better historical accounts of the debate over administrative values, capable of linking these debates to the broader environment. Indeed, the question of administrative legitimacy can best be understood using a historical contextual approach because "in its very essence it is an historical question" (Adams 1992, 370). One model for such work is White himself. In 1958, Gaus stated that "[w]e have not known our 'usable past' in our public service" (1958, 235), but suggested that White's administrative histories demonstrated how to fill this gap. Gaus predicted that his historical scholarship, and not his *Introduction to the Study of Public Administration,* would be White's lasting contribution to public administration.

But Gaus was wrong. White's legacy seems doomed to be defined by a sentence he wrote in the preface to his first major work, at the age of 34. As Roberts notes: "One of the consequences of the field's failure to extend the work undertaken by White is that we lack standing to challenge naive schemes for institutional reform or to propose more plausible alternatives" (Roberts, 2009). The field is poorer as a result, less able to relate the evolution of the administrative state, including the development of administrative values, to a broader context. If the general hypothesis of this paper is correct, such work would serve to illustrate the relevance, legitimacy, and uneasy competition between values that has come to define public administration.

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Notes

1. Indeed, in a book dedicated to celebrating Goodnow's work, Dimock (1935, 290) notes that White is generally supportive of forms of legislative oversight, while Goodnow is more critical. In this respect, White is more consistent with Rosenbloom's (1983) advocacy of a legislative approach to administration.
2. After 1926, White published three more editions of his textbook, the last in 1955. White does not revise his original introduction, but instead adds new ones, and so the statement about looking to management rather than law remains in the latest edition. But elsewhere in his textbook White significantly alters his views to reflect prevailing trends. Between 1926 and 1955 he largely abandons Taylorism in favor of Herbert Simon's positivist viewpoint, offers a more nuanced consideration of the relationship between politics and administration, and argues for the relevance of multiple normative and positive frameworks rather than privileging any single approach (Storing 1965).
3. There are a couple of indications that White did not see Goodnow as an antagonist, and indeed used Goodnow to support what might be seen as pro-management approaches to law. In each of White's four editions of *Introduction to the Study of Public Administration,* he criticizes the legalistic views of Ernst Freund using a quote from Goodnow: "What needs emphasis is no longer the inherent natural rights of the individual, but the importance, indeed the necessity, of administrative efficiency" (cited in White 1926, 445). An even more striking quotation from Goodnow is used to justify the need for administrative discretion and efficiency given the needs of the growing state: "It is certainly true that large judicial control over administrative action is incompatible with administrative efficiency, and the days in which we live, the days of the factory and the mine, the railroad and the great industrial corporation, the tenement house and the slum, make greater social control over individual action an absolute necessity. Effective social control is only possible where administration is efficient. That being the case, it is inevitable that judicial control over administration must be curtailed" (cited in White, 1926, 448).
4. Lynn criticizes Pfiffner (1935) for making the similar claim that that the nature of law is to lag behind social progress. But again the context of the time is important. When Pfiffner wrote, the federal courts were aggressively blocking the social and economic reforms of the New Deal in a way that was ideological and partisan. The legal reasoning of many of the anti–New Deal positions was suspect, backward looking, and subsequently has been overturned. At the time, some described the role of the court as contravening self-government and the will of the public. Pfiffner's view is consistent with that of most of the public at that point, and certainly with the New Dealers, who saw democracy itself as being at stake. "For the New Dealers, the attitude of the Court imperilled the whole hope of a decent society … If regulated capitalism was impossible, then what could ensue but the anarchy of reaction, leading in the end to the violence of resolution? The impasse threatened the future of democracy in America" (Schlesinger 1960, 495).
5. On-the-job learning should focus on cultivating "an intimate knowledge of the basic law, rules, and regulations, and the fundamental purposes which the law and the regulations serve" (White 1935, 51). At the top of his list for in-service training is "formal course work in the substantive law of the department to which he is attached.… The subject matter of these basic statutes

will eventually become known as they are used by career men, but this process of learning by use, invaluable though it is, needs to be supplemented by systematic instruction in the whole range of law related to a particular field of administrative work" (1935, 52–53).

6. The New York Times. 2008. Biden and Cheney Clash on Role of No. 2. December 21, 2008. (http://thecaucus.blogs.nytimes.com/2008/12/21/with-biden-and-cheney-clashing-views-of-a-job/?hp)
7. White was not an uncritical proponent of executive-led reforms. White (1955) concludes that reorganization, despite its claims, rarely saves large amounts of money, but has increased the authority of executive branch actors. Gaus (1958) notes that White's early work considered the problems that arose from the clumsy application of efficiency and economy movements.

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