Bringing Morality Back In: Congress, the Civil Service and the Legitimacy of the Administrative State

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Abstract

The legitimacy (or lack thereof) of the administrative state has long been of central interest within the discipline. This study approaches the topic from an unconventional perspective. Relying on explanations of legitimacy as “justifiability,” and on value congruence as a basis according to which legitimacy attributions can be assessed, an investigation is undertaken into the values with which members of Congress have associated the institution of the civil service over the 122-year period beginning in 1883. A key finding is that legislators articulate the role of the civil service less on the basis of governance considerations than on the basis of operational considerations and on the basis of the extent to which the institution upholds and promotes societal, including in particular moral, values. This finding allows the interpretation that its association with moral values serves as the institution’s primary source of legitimacy.
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Introduction

An enduring concern of public administration scholars in the United States has been the lack of legitimacy accorded the federal bureaucracy in its policymaking role. From the Progressive Era forward, the dominant framework for understanding and legitimizing the bureaucracy’s role in governance has been the “politics-administration dichotomy” whereby the contribution of administrators is understood as predominantly if not exclusively instrumental in character (Mosher, 1982). The problem, as has been widely noted, is that the politics-administration dichotomy doesn’t reflect reality – civil servants routinely make decisions with important policy implications. Scholars have widely bemoaned the predicament which the dichotomy presents. It comports with accountability norms which dictate that policy be the domain of elected officials and that bureaucrats serve in a subordinate capacity but disregards the reality of the modern state such that policy specifics are inevitably left to those same unelected bureaucrats.

Multiple efforts have been made to articulate a framework in which the bureaucracy’s substantive role in the policy process can be legitimized. The Constitution is a popular point of departure. Thus, for example, in *To Run a Constitution* (1986), Rohr contends that the bureaucracy’s active role in policymaking should be accorded legitimacy because it is consistent with “constitutional principles” (p. 83). In *Bureaucracy and Self-Government* (1996), Cook highlights a series of historical episodes starting with the Constitutional Convention of 1787, in the course of which the case has been made for a non-instrumental, “constitutive” role for the bureaucracy in governance. In *Madison’s Managers* (2006), Bertelli and Lynn argue that
managers should be accorded discretion to the extent that they promote balance within the separation of powers regime outlined in the Constitution. Each of these works represents a challenge to the politics-administration dichotomy. Yet none has proven as compelling nor as durable an explanation for the role of the bureaucracy in governance as has the politics-administration dichotomy.

This study approaches the question of how the role of the bureaucracy in policymaking can be legitimized from a different perspective. Rather than devise a new and alternative intellectual framework, the approach here is inductive in nature. Specifically, an investigation is undertaken of the perspective of an important and critical group of actors, members of Congress, on the question of bureaucratic legitimacy. More specifically, the values that members of Congress have invoked when discussing issues related to the federal civil service are investigated as a means of gaining insight into how their attitudes toward the bureaucracy. A premise of the study is the values invoked serve as key indicators of the basis on which legitimacy is attributed. Although public administration scholars have investigated the legitimacy issue predominantly in a legal or Constitution-oriented context, those who have probed most deeply into the nature of the construct contend that the law is but one of several sources of legitimacy.

As a means of assessing the attitudes of legislators on the issue of bureaucratic legitimacy, an inventory is compiled of the values invoked by members of Congress in reference to the civil service over the 122-year period from 1883 to 2004. It is contended that these values can be usefully categorized according to level of analysis whether “individual,” “organizational/operational,” “institutional/governance,” or “societal,” and further that each such level represents an alternative frame through which legitimacy can be articulated and understood. Examples of the questions to be addressed include the following:
• To what extent do legislators invoke values like “accountability,” “neutrality,” and “expertise” which highlight the bureaucracy’s purpose and role in relation to the other institutions of government?

• To what extent do legislators invoke values like “efficiency,” “effectiveness,” and “flexibility” which highlight the bureaucracy’s operational contributions?

• To what extent do legislators invoke values like “equity,” “individual rights,” and “legality” which place the bureaucracy in a broader, societal context?

• To what extent do legislators reference a particular category of societal values – moral values such as “honesty,” “justice” and “fairness” – central to the founding of the civil service which has been a central vehicle through which Congress regulates and articulates its attitudes toward the bureaucracy?

That the study is longitudinal in nature prompts an additional question;

• Has there been a shift over time in the relative emphasis placed on the different values and value categories and hence bases for attributions of legitimacy?

**The Nature of Legitimacy**

In contrast with earlier studies that assess the legitimacy of the bureaucracy’s policymaking role in a predominantly institutional context, this study relies on several works which highlight the extent to which the legitimacy of an institution like the bureaucracy can derive from sources other than the role to which it is formally assigned. Three such studies highlighted here include those of Beetham (1991), Fallon (2005), and Hurrelman et al. (2005).

**Beetham’s “The Legitimation of Power”**

According to Beetham, (1991, p. 19), “For power to be fully legitimate…three conditions are required: its conformity to established rules; the justifiability of the rules by reference to
shared beliefs; the express consent of the subordinate…to the particular relations of power.”

“Conformity to established rules,” equates to what Beetham calls “legal validity” (p. 16).

Beetham (p. 17) comments that, “legal validity is insufficient to secure legitimacy, since the rules through which power is acquired and exercised themselves stand in need of justification.” Power arrangements must be, “justified in terms of beliefs shared by both dominant and subordinate” (p. 17) in order to be considered legitimate;

These justifications in turn depend upon beliefs current in a given society about what is the rightful source of authority; about what qualities are appropriate to the exercise of power and how individuals come to possess them; and some conception of a common interest, reciprocal benefit, or societal need that the system of power satisfies (p. 17).

The third “level” of legitimacy has to do with whether there is a, “demonstrable expression of consent on the part of the subordinate to the particular power relation in which they are involved, through actions which provide evidence of consent” (p. 18).

Beetham’s (1991) discussion has important implications for the debate over whether and how the bureaucracy’s role in policymaking can be legitimated. One is that legality does not equate to legitimacy. This idea is particularly relevant in the context of Bertelli and Lynn’s (2006) claim that legitimacy must be derived from, “the consent of the governed, as expressed through the Constitution and laws, not from any personal system of values, no matter how noble" (p. 7). For Beetham, the law is but one touchpoint in assessing legitimacy. And in distinction with the ideas of Bertelli and Lynn, for Beetham, values – collective values, are very much part of the legitimacy equation. In reference to his second “level” of legitimacy relating to the “justifiability” of a power relationship, Beetham (p. 11) comments;

When we seek to assess the legitimacy of a regime, a political system, or some other
power relation, one thing we are doing is assessing how far it can be justified in terms of people's beliefs, how far it conforms to their values or standards, how far it satisfies the normative expectations they have of it.

A second key point to be derived from Beetham’s discussion is that if legitimacy is in part contingent on “justifiability,” a rhetorical element is thereby introduced into the discussion. Whether or not a particular power arrangement is regarded as legitimate is contingent on how persuasive a case can be made on its behalf, “in terms of the beliefs and values current in the given society” (Beetham, p. 12).

Fallon’s “Legitimacy and the Constitution”

Whereas Beetham (1991) investigates the nature of legitimacy in a social science context, Fallon’s (2005) interest is in legitimacy in the context of constitutional law. His article is of interest here both because, as noted above, discussions of bureaucratic discretion often reference the Constitution and because the framework he introduces is well suited for a broader investigation of the construct.

Table 1 here

Fallon’s (2005) three “criteria” for assessing legitimacy (p. 1790) loosely parallel Beetham’s (1991) three “levels” of legitimacy (see Table 1). Similar to Beetham, Fallon lists “legal legitimacy” as one of his three criteria. Whereas for Fallon, legal legitimacy refers to formal law, for Beetham, legal legitimacy relates to, “rules governing the acquisition and exercise of power the 'rules of power'” (p. 16) including not only to formal law but also, “informal conventions” (p. 16). Fallon’s second criterion is, “sociological legitimacy” which is explained as follows;

As measured by sociological criteria, the Constitution or a claim of legal authority is
legitimate insofar as it is accepted (as a matter of fact) as deserving of respect or obedience or, in a weaker usage that I shall explain below, insofar as it is otherwise acquiesced in (p. 1790).

As noted in the above quote, Fallon (2005) distinguishes between “weak” and “strong” forms of sociological legitimacy. Fallon equates weak sociological legitimacy with “mere acquiescence” (p. 1795) loosely analogous to Beetham’s third dimension of “consent” (see Table 1). The “strong” form of sociological legitimacy is analogous to Beetham’s second “dimension” of legitimacy – the justifiability of a power relationship, “for reasons beyond fear of sanctions or mere hope for personal reward” (p. 1795). Fallon includes in his framework a third criterion which he calls “moral legitimacy”; “Pursuant to a moral concept, legitimacy inheres in the moral justification, if any, for claims of authority asserted in the name of the law.” (p. 1796).

The relationship between the three forms of legitimacy and what Fallon (2005, p. 1850) calls “overall legitimacy” is complex. Fallon (2005) states that, “legal legitimacy depends fundamentally on sociological legitimacy” (p. 1848); a particular law can be considered legitimate only to the extent that it is “accepted as authoritative” (p. 1805). Noting that the Constitution was not ratified in accordance with the provisions of the Articles of Confederation, Fallon claims that the Constitution itself is legally legitimate only because it is sociologically legitimate: “the foundations of law, including constitutional law, lie in sociological embrace and acceptance of rules, norms, and interpretive practices” (p. 1848).

For Fallon, moral legitimacy trumps legal legitimacy: “Even if a regime or decision enjoys broad support, or if a decision is legally correct, it may be illegitimate under a moral concept if morally unjustified” (p. 1796). He says that the Supreme Court acted, “morally legitimately,” in deciding Bolling v. Sharpe (1954) (relating to school desegregation in the
District of Columbia), even if the decision was, “illegitimate as a strictly legal matter” (p. 1835).

For Fallon, purely “pragmatic” (p. 1836) considerations can also enter into assessments of legitimacy. Citing Judge Richard Posner, Fallon states that although Bush v. Gore (2000) may not have been defensible from a, “a narrowly legal standpoint” (p. 1836) the Supreme Court was nevertheless, “not acting illegitimately in bringing a concern with avoiding disaster to bear on the decision” (p. 1836).

**Questions Relating to Bureaucratic Legitimacy**

The Beetham (1991) and Fallon (2005) frameworks prompt the following questions relating to the legitimacy of the bureaucracy’s role in policymaking;

1. In light of the subordinate status accorded “legal legitimacy” in both frameworks, has the public administration community placed too much emphasis on the Constitution as a basis for assessing the legitimacy accorded the bureaucracy’s role in policymaking?

2. Does the bureaucracy achieve Beetham’s (1991) standard of “justifiability” – Fallon’s (2005) “strong” form of sociological legitimacy? Is the authority it exercises justifiable with regard to “beliefs shared by both dominant and subordinate” (Beetham 1991, p. 17)?

3. Does the bureaucracy gain legitimacy on the basis of moral considerations consistent with Fallon’s (2005) third criterion?

The latter question may seem incongruous – in Weber’s formulation, bureaucracy is a form of “formal rationality” featuring “means-end calculation” which can be contrasted with “substantive rationality” featuring, “the subordination of realities to values” (Kalberg, 1980, p. 1161). Morality is however integral to the institution of the civil service which serves as a key
vehicle through which Congress acts in addressing broad issues relating to the bureaucracy in its governance capacity.¹ Mosher (1982) notes that the civil service reform movement which culminated in passage of the Pendleton Act of 1883 was predominantly “moralistic” (p. 68) in nature and that, “elements of morality in public decision making,” “may be the most important criteria of all,” (p. 239) in discussions of merit principles on which the civil service is founded.

The politics-administration dichotomy would ostensibly exclude considerations of morality given the presumption that members of the bureaucracy serve in a strictly agential capacity. Kass (1990, p. 119) comments as follows in this regard:

> It is often contended that agent norms are really meant to instrumentalize an individual or organizational agent and make it little more than an amoral tool at the principal's disposal (Pitkin, 1967). Thus, the agent becomes bound to do the principal's bidding no matter how unethical it may be from the larger, social standpoint. Those who hold this viewpoint contend that the agency relationship actually short-circuits the agent's individual or organizational responsibility as an ethical actor.”

Kass however rejects this approach in arguing that members of the bureaucracy should envision their roles as “stewards” rather than agents.

**Political Discourse and Value Congruence as a Basis for Assessing Legitimacy**

Beetham’s (1991) articulation of the nature of legitimacy relies heavily on the idea of “justifiability.” Here he takes issue with conventional definitions of legitimacy commenting:

> The first objection to the Weberian definition of legitimacy —which could be called the 'received' definition…is that it misrepresents the relationship between legitimacy and people's beliefs. A given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs (p. 11).
From Beetham’s perspective, legitimacy is a contingent circumstance. A given institution like the civil service is not inherently legitimate or illegitimate. Rather its legitimacy is contingent on the “justifiability” of its exercise of authority with justifiability equating to the strength of the case that can be made on the institution’s behalf at any one point in time.

This conceptualization of legitimacy is important in the context of this study because of the emphasis it places on the latent nature of legitimacy. Legitimacy has been defined as, “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions” (Suchman, 1995, p. 574). Implicit in this definition is that such perceptions exist and are susceptible to examination as such. Accepting Beetham’s approach however of legitimacy as “justifiability,” those underlying perceptions only become relevant when made manifest in related discourse. The focus of the social scientist shifts from what is in the heads of those about whom legitimacy attributions are made to how what is said regarding the object of scrutiny can provide insights into those underlying attitudes and dispositions. Such a focus highlights the importance of rhetoric not only as a vehicle through which underlying perceptions can be probed but as an element of the legitimating process itself – what is said in turn affects what is thought.

At issue in this study is the justifiability of the power exercised by members of the civil service. Given that legitimacy itself is not a subject of discourse, legitimacy attributions must be inferred on the basis of how participants articulate their positions on the different civil service-related issues on which debate has occurred. Based on the logic presented below, what legislators say about the civil service on the floors of the House and Senate in the context of a specific item of legislation can serve as a valid representation of the underlying attitudes of the broader body politic toward that institution. This approach to assessing legitimacy is endorsed
by Hurrelman, Schneider, and Steffek (2007, p. 8), who note that,

the conceptual schemes and worldviews of political actors, and hence the benchmarks
used in their legitimacy evaluations, are, to a large extent, shaped by political discourses.
Thus it seems worthwhile to study the legitimacy claims advanced in public
communication. This approach has the obvious advantage of tapping into explicit
statements and claims (i.e., natural data), which facilitates the identification of the
normative criteria underlying such evaluative propositions.

One element of the model developed here is the conceptualization of legitimacy as a
matter of value congruence. Beetham (p. 11) comments on the centrality of value congruence to
considerations of legitimacy as follows;

When we seek to assess the legitimacy of a regime, a political system, or some other
power relation, one thing we are doing is assessing how far it can be justified in terms of
people's beliefs, how far it conforms to their values or standards, how far it satisfies the
normative expectations they have of it. We are making an assessment of the degree of
congruence, or lack of it, between a given system of power and the beliefs, values and
expectations that provide its justification.

Consistent with the ideas of Rokeach (1979a, p. 18) with regard to institutions in general, the
civil service can be said to be characterized by its own, distinctive, “complex of values.” Values
associated with the civil service include, most prominently, those of “political neutrality,”
“expertise,” and “continuity,” labeled here “integral” values. However, the civil service has
associations other than those directly related to its function in governance. The civil service and
its members serve as a vehicle for the delivery of service, as an employer, as an instrument of
coercion, as a collective that can wield political influence through the unions to which its
members belong, etc. As such, the entity of the civil service is susceptible to being assessed according to values other than those with which it is most closely associated. “Efficiency” is an example of a “non-integral” value on the basis of which the civil service is often assessed. The degree of “overall” legitimacy accorded the civil service according to the model represents a balance between the degree of priority placed by the body politic on integral versus non-integral values. To the extent that “efficiency” is put forth as a value according to which the civil service should be assessed and that “efficiency” is not a value integral to the institution of the civil service, the legitimacy consequences for the institution would be adverse. To the extent that “political neutrality” is put forth as a value according to which the civil service should be assessed and that “political neutrality” is a value integral to the institution of the civil service, the legitimacy consequences for the institution would be advantageous.

As one example, proponents of the Hatch Act Reform Amendments of 1993 invoked the value of “individual rights” to support their contention that restrictions on political participation by federal employees should be loosened. Opponents of the bill invoked the value of “political neutrality” in arguing that to loosen these restrictions would result in politicization of the bureaucracy. According to the model, by virtue of the fact that legislators have strong incentives to demonstrate value compatibility with their constituents, the values invoked in this context can be regarded as representative of those of the larger body politic. The incidence of references to the value of “political neutrality” (and other values integral to the institution) in comparison to those of “individual rights (or other values not integral to the institution) can be regarded as a barometer of the institution’s legitimacy.

Figure 1 here

Figure 1 represents an attempt to depict graphically the dynamics of what is in effect, a
legitimacy “cycle.” The body politic is presumed to have latent value preferences in relation to the institution of the civil service (Column G). To the extent the balance of those preferences favors values integral to the civil service such as “political neutrality,” “expertise,” and “continuity” over values relevant but not integral to the civil service, the legitimacy disposition would be positive: to the extent the balance of those preferences favors values such as “efficiency,” “effectiveness,” and “individual rights” relating to which the civil service is susceptible to assessment but that are not integral to the institution, the legitimacy disposition would be negative.

With the introduction of a civil service-related item of legislation (Column A), legislators have an incentive to ascertain the nature of this latent balance in the context of the issue at hand (Column C), and then, during the course of debate, articulate what they believe to be the value preferences of their constituents in relation to that issue (Column E). The debate in turn impacts those same value preferences/priorities (Column F). The result is a dynamic system in which legislators are simultaneously attempting to read and influence the value preferences of their constituents. Although the actual balance between civil service and non-civil service-related values (i.e. legitimacy) for the body politic as a whole (Column G) is unknown, the value preferences articulated by legislators in debate (Column E) are accepted here as a valid proxy for such.

In the figure and consistent with Beetham’s (1991) interpretation, legitimacy is a latent construct which becomes manifest only incidentally and in the form of the justifications made on behalf of or in opposition to the object/institution of interest. Beetham (p. 14) calls this “legitimacy in context,” commenting, “Legitimacy for social scientists is always legitimacy-in-context, rather than absolutely, ideally or abstractly.” The civil service is an object of attention
only intermittently. One form of intervention that causes it to become an object of attention is
the debate that occurs over legislation designed to address one or another civil service-related
issue. These debates generally take an adversarial form with one side of the debate articulating
the importance of one set of values and the other side of the debate articulating arguing for the
priority of a different set of values. The Hatch Act Reform Amendments of 1993 cited above
provide an example with the value of “political neutrality” pitted against that of “individual
rights.” During the course of each such debate, legislators have strong incentives to articulate
values that they perceive as having resonance with their constituents, that is, values which they
believe some/all/a majority of their constituents would find compelling in the context of the
specific issue and the specific institution. Legislators are thus engaging in a legitimizing
exercise.

In this model, the “overall” legitimacy of an institution like the civil service is
substantially unknown and unknowable. What is important are the perceptions of legislators as
to how their constituents prioritize the relevant values in any particular instance. To the extent
that value prioritization serves as the basis for legitimation, the priorities so articulated become
the only overt manifestation according to which the relative legitimacy of an object/institution
like the civil service can be assessed.

The result of this investigation is a list of values that have been invoked by legislators in
reference to the civil service in priority order according to incidence of all values referenced.
There is a list for the period as a whole and for each of six, twenty-year intervals separately. The
thirty-nine values with which legislators have associated the civil service over a period of 122
years lend themselves to categorization by “level,” including the “individual” level, the
“organizational/operational” level, the “institutional/governance” level and the “societal” level.²
The values with which relate to the civil service’s formal role including, “continuity,” “political neutrality,” and “expertise” are assigned to the “institutional/governance” level given that they relate to the role of the civil service in its governance function. At any one point in time however, based on the bill being discussed as well as contextual factors and perceptions of evolving public attitudes, members may place emphasis on, “organizational/operational” values such as “efficiency,” “effectiveness” and “flexibility.” Alternatively, legislators may articulate the case on behalf or against a particular piece of civil service-related legislation on the basis of broad “societal” values including “individual rights,” “legality,” and “equity.”

**Public Administration and the “Crisis of Legitimacy”**

In the preface to, *To Run a Constitution* (1989, p. ix) John Rohr states as his purpose, “to legitimate the administrative state in terms of constitutional principle.” He seeks to counter the instrumental view of administration articulated in Wilson’s famous essay, “The study of administration” (1887) by presenting an alternative narrative pursuant to which the bureaucracy is accorded a more central role in governance. Rohr’s case relies not on the Constitution itself, where, as he notes (p. 1), “the word administration does not appear,” but on the principles articulated during the process of creating and ratifying the Constitution. For Rohr, the role played by the bureaucracy in today’s “administrative state” is highly compatible with those principles whereas the framework presented by Wilson and other proponents of a “dichotomy” between the policymaking and policy execution functions is not.

In *Bureaucracy and Self-Government* (1996), Brian Cook presents a different conceptualization of the problem. On the one hand, Cook is critical of Rohr who he says, “risks promoting exactly what he professes to abhor, namely, public officials claiming stewardship of the nation and the citizenry” (p. 175). On the other hand, he professes agreement with Rohr on
the need to “carve out,” “an adequate sphere of constitutionally legitimate independence for administration” (p. 177). Cook seeks a, “constitutive reconception of public administration in American politics and government” (p. 178) in which administrators are accorded the legitimacy to exercise discretion, “based on the giving of reasons linked to clear, substantive rules and to the underlying values and the democratic consensus that constitutes the public interest” (p. 178).

Bertelli and Lynn (2006) also seek a basis on which to legitimize the discretionary authority exercised by public managers. They are critical of the “Blacksburg view” (148) articulated by Rohr among others on the basis that it places excessive reliance on, “an administrator's own moral principles as the bases for responsible conduct” (p. 136). They comment;

Even when such ideas refer to democratic theory, even the Constitution, they are not derived from the operation of constitutional institutions and do not constitute a mechanism of constitutional legitimacy. These ideas are invalid in principle because they explicitly or implicitly assume the professional and ethical autonomy (some would say sanctimony) of public managers and depend upon higher motives. As even a cursory glance at the Bill of Rights makes clear, such dependence is inimical to the Constitution (p. 148).

Bertelli and Lynn would rely on the selection of managers who can demonstrate the capacity to exercise discretion on the basis of “judgment,” “balance,” “rationality,” and “accountability.” Managers who evidence these qualities will tend to make “good judgments” (p. 3) and thereby gain the trust of, “legislators, elected executives, and citizens” (p. 3).

Each of these justifications of the bureaucracy’s role in governance reference the centrality to issues of legitimacy of the ideas and opinions of these same “legislators, elected
executives, and citizens” (Bertelli & Lynn, 2006, p. 3). The approach taken here is to assess the attitudes of one such group more directly: What is and have been the attitudes of members of Congress towards the civil service and the basis on which it should be accorded legitimacy?

**Congress and the Civil Service**

Hurrelman et al. (2005) suggest that one look to “political discourse” to identify the “values and norms” pursuant to which legitimacy is alternatively accorded or withheld. The discourse that serves as the object of this study is that which has occurred on the floors of both the House and Representatives and Senate on legislation relating to the civil service over the 122-year period, 1883-2004.

Congress is but one of many venues in which civil service-related discourse has occurred. Others include the editorial pages of prominent newspapers, decisions of the Supreme Court and presidential speeches and statements. Nevertheless, what members of Congress say and their perceptions of the civil service and its role are of particular importance. Institutionally, Congress, along with the president, has primary responsibility for oversight of the civil service. Congress had primary responsibility for the Pendleton Act of 1883 which created the framework for the civil service and has been integrally involved in every major reform or change to the system since. Congressional attitudes as to the values that are appropriately accorded priority with regard to each of multiple, civil service-related items of legislation are therefore highly consequential. Members of Congress are by definition representative of the broader society and the views that they articulate would thus be expected to reflect those of the public at large. That congressional deliberations are captured in written form with an extensive, historical record of congressional opinion available for review is a further advantage of such a focus.

Table 2 here
For the purpose of tracking the discourse that has taken place in Congress with regard to the civil service, a history of relevant legislative items was compiled. Based on a review of several different accounts/chronicles of the federal civil service including the government’s own Biography of an Ideal: A History of the Federal Civil Service (U.S. Office of Personnel Management, 2003), thirty-three separate “episodes” in the history of the civil service were initially identified. The subject matter for ten of these episodes was not of sufficient import to warrant substantive debate on the floor of either chamber. Attention was therefore directed at the twenty-three episodes shown in Table 1 on which debate was more than pro forma in nature. These episodes span a period from 1883 when the Pendleton Act was passed to 2004 when Congress passed the Federal Workforce Flexibility Act, thus allowing a robust longitudinal perspective on how congressional attitudes with regard to the civil service have evolved over time.

**Methods**

Content analysis is used here as a means of assessing the relative incidence of the values with which members of Congress have associated the civil service over the 122-year period of interest. In its most basic form, content analysis consists of the tabulation of word frequency. An underlying premise is that the more frequently a word, in this case a value, is referenced relative to other values, the higher the priority placed on that value (Duriau, Reger, & Pfarrer, 2007). The “corpus” of documents subjected to analysis consisted of excerpts from the Congressional Record. Debates relating to each of the twenty-three legislative episodes of interest totaling over 3000 pages were extracted, digitized and loaded into a computer-assisted qualitative data analysis software program (QDA Miner/WordStat).

There is precedent for the use of content analysis as a means of assessing value
associations. The work of Rokeach (1979) is particularly relevant in this regard. In reference to his interest in institutional change, Rokeach (p. 56) comments,

If a social institution is said to undergo natural change over time, institutional value priorities should also undergo change. Content analyses of any given institutional documents of differing time periods should enable us to demonstrate such changes, and moreover, magnitude of change can be operationally manifested as differences in value rankings.

Rokeach (p. 58) further references the works of White (1951) and Eckhardt (1972) in commenting that, “Extensive research…has shown that the values contained in various historical and political documents can be reliably extracted by content analysis. Kabanoff et al. (1995) also endorse the use of content analysis for purposes of value prioritization commenting that the measurement of, “value patterns…is accomplished by counting the frequency with which different values are referred to in the text being analyzed. Frequent references are interpreted as an indication of the values' importance or centrality” (p. 1079).

Given the heterogeneous nature of the text being analyzed with references to the civil service intermingled with references to other matters, it was determined that the entire corpus of Congressional Record excerpts should be coded to, 1) identify only those portions of the text that related to the civil service, 2) identify only those civil-service-related portions of the text that included a value association. The paragraph was used as the unit of analysis for this purpose. Consistent with the approach recommended by Neuendorf (2002), a coding protocol was developed and piloted on each of five separate samples of text. The coding protocol was revised after each iteration to improve reliability. On the fifth and final iteration two coders achieved an interrater reliability of 91 percent exceeding the 90 percent threshold cited Neuendorf as
Consistent with standard protocol, a content analysis “dictionary” had to be created. The dictionary consists of the “keywords” for which the content analysis program (WordStat) was programmed to search sorted by theoretically-relevant categories. The primary category for purpose of this analysis were the values invoked in reference to the civil service: the secondary categories were the “levels”- “individual,” “organizational/operational,” “institutional/governance,” and “societal” to which the values were assigned.

The dictionary development process employed here was similar to that of Bengston and Xu (2009) and others to the extent that it was iterative in nature with both deductive and inductive elements. The objective in the first stage was to develop a comprehensive list of values that have been associated with the federal civil service over its history. The “inventory” of “public values” compiled by Beck-Jorgensen and Bozeman (2007) was used as a starting point on the basis that the values associated with the civil service as a distinctly public institution should approximate those of the public sector more generally. A review was then undertaken of a series of documents that have featured prominently in the history of federal civil service to identify a more specific list of values with which that institution has been identified and to thereby customize the list to the nature of the inquiry.4

In compiling the dictionary, it was necessary to simultaneously identify the values and to determine how words with value connotations should appropriately be grouped. For example, with “ability” identified as one of the values with which the civil service is commonly associated, all the words connoting the value of ability had to be identified. Examples of the “keywords” grouped under the value of ability in this study were “competence,” “talented,” and “intelligent,” as well as “ability” itself.
Although every attempt was made to enhance the rigor of the process by which values and associated keywords were identified and categorized, there is an inevitable element of subjectivity. As one example, a determination had to be made whether the values of “ability” and “expertise” were sufficiently similar in their connotations to list as a single value. Also problematic was the determination of the value with which a particular keyword should be associated. Thus, for example is the keyword “skill” more closely associated with “ability” or “expertise”?

Another methodological challenge is presented by the fact that any one keyword might be used in a variety of different senses and contexts only some of which have value connotations. The initial list of keywords was winnowed down to delete those that resulted a high proportion of “false positives.” Consistent with the procedure recommended by Roberts (1989), the KWIC (key-word-in-context) feature of QDA Miner was employed to extract all paragraphs including each of the keywords relating to each target value. In each instance, the keyword was examined in the context of the surrounding text as a means of ascertaining whether the word was being used consistent with its assumed sense. Where, in the case of any one keyword, a high proportion of “false positives” were found, the keyword was either modified using the software’s lemmatization feature or dropped.

Dictionary validity was further enhanced through use of the “exclusion” feature in QDA Miner whereby the program can be directed to exclude from the tabulation specific words or phrases which result in false positives. For example, “reform” was identified as one of the keywords associated with the value “progress.” In the course of the debate over the Brownlow Commission report there were multiple references to the “Committee on Civil Service Reform.” To avoid having this use of the word “reform” included as a value-related reference, “Committee
on Civil Service Reform,” was added to the “exclusion list” so that any time the phrase was encountered, the word would be skipped. The final dictionary of keywords and phrases categorized by value is shown in Appendix A.

**Findings**

Table 3 here

Table 3 lists the 39 values invoked by Members of Congress in reference to the civil service over the 122-year period 1883-2004. The values are categorized by “level” including “individual,” “organizational/operational,” “institutional/governance,” and “societal.” These categories are chosen because, 1) they are heuristically useful, and 2) the categorization meets the criterion of face validity. Multiple alternative schemes for the categorization of values have appeared in the literature. Rutgers (2008, p. 109) has noted that, “There are no self-evident core values, nor categorizations or hierarchies of values that can simply be applied universally in theory or practice.” The categorization scheme employed here loosely parallels that of Beck-Jorgensen and Bozeman (2007) who categorize public values according to, “aspects of public administration or public organization the value effects” including; “the contribution of the public to society,” “the transformation of interests to decisions,” “the relationship between politicians and public administrators,” “the relationship between public administrators and “the environment,” “the internal organization and function of public organizations,” and “public employees.”

Each of the “organizational/operational,” “institutional/governance,” and “societal” categories can be conceptualized as an alternative “frame” through which the contributions of the civil service can be understood and articulated. Within the context of discussions relating to the legitimacy of the administrative state, members of the discipline have placed almost exclusive
emphasis on what is labeled here as the “institutional/governance” frame. Of the three sets of authors highlighted above, this association is most apparent with regard to the work of Bertelli and Lynn (2006) whose case for the legitimacy of the exercise of discretion on the part of unelected bureaucrats is anchored in the Constitution and in administrative law.

As noted above however, legality is but one basis on which legitimacy can be assessed. For Beetham (1991) the legitimacy of an authority relationship is a function not only of, “conformity to rules” (p.) but of the, “justifiability of rules in terms of shared beliefs,” and of “expressed consent” of that relationship. Fallon (2005) offers a similar framework while highlighting what he calls “moral legitimacy” as especially potent.

Tables 4 & 5 here

Apparent from Table 4 is that legislators are not constrained by governance considerations in articulating their ideas and preferences with regard to the civil service. The most widely-referenced value for the 122-year period is that of “efficiency,” categorized here as an “organizational/operational” value, followed by “morality,” and “progress,” both categorized here as societal values. Table 5 reveals that of the three frames, for the period as a whole, legislators employed the “societal” frame the most and the “institutional/governance” frame the least.

Table 6 here

Table 6 provides some insight into the specific items of legislation that in part, drove the rankings for each twenty-year segment. “Efficiency” was the most widely-referenced value for the periods 1903-1922 and 1943-62. A key bill for the 1903-1922 period was the Retirement Act of 1920 pursuant to which the government created a pension system for its employees. Supporters of the Retirement Act argued that passage of the bill would improve efficiency by
ridding the government of (presumably) inefficient superannuates. For example, during the
debate on the bill, Congressman Nelson (R – Wisconsin) commented; “Our slogan must be fewer
employees in most of our departments, but greater efficiency in all. Eliminate the drones and
increase the pay and the possibilities of scientific advancement for those who are efficient and
remain in the service” (Congressional Record, 4/29/1920, p. 6285). Efficiency was the second
most widely-referenced value for the period 1923-1942 during which period the Brownlow
Commission report was debated. Supporters of legislation to replace the three-member Civil
Service Commission with a single administrator reporting directly to the president contended it
would promote “efficient administration.” Congressman Cochran (D – Missouri), commented in
this regard that,

No large business corporation would think for a moment of setting up a personnel board
headed by a commission of three members. Business and industrial corporations use a
single personnel director in order to get efficient administration. This is exactly what we
propose in the Government (Congressional Record, 4/6/1938, p. 4919).

The second most widely-referenced value for the 122-year period as a whole was
“morality,” associated keywords for which included “honesty,” “justice,” “fairness,” “purity,”
“integrity,” and “morality.” Morality was the most widely referenced value for three of the
twenty-year segments including 1883-1902, 1923-1942, and 1963-1982. In the context of the
debate over the Pendleton Act, Senator George (D – Mississippi) commented;

this bill … seeks to remedy are of the most momentous character, affecting deeply the
purity of administration and even threatening the stability of our free institutions. It
proposes to overthrow the dangerous and corrupting system which has for its legend "To
the victors belong the spoils (Congressional Record, 12/15/1882, p. 319)
During debate over the Classification Act of 1923, there were frequent references to the “injustices” of the system according to which salaries were set for government employees. Senator Jones (D - New Mexico) referenced a circumstance in which the salaries of government accountants varied from $2000 to $4000, “for precisely the same kind of service,” stating that a provision put forth that would have sustained the status quo would, “perpetuate[s] the present injustice and inequality” (Congressional Record, 3/2/1923, p. 5085). On August 24, 1978, during debate over the Civil Service Reform Act of 1978, Senator Stevens (R – Alaska) expressed concern that the bill would, “sacrifice the political neutrality of the civil service to its improved efficiency,” and it was therefore important to, “preserv[e] the integrity of the civil service” (Congressional Record, 8/24/1978, p. 27540). The third most widely-referenced value for the period as a whole was “progress,” for which one of the keywords is “reform.” The necessity for reform of the civil service was a particularly prominent theme during debates over the Pendleton Act of 1883, the Civil Service Reform Act of 1978, and the Homeland Security Act of 2002. None of the top three most widely-referenced values relates to governance considerations. Only “neutrality” at number 5 relates specifically to relationships within the government, what Beck-Jorgensen and Bozeman (2007) call, “the relationship between politicians and public administrators” (p. 360).

Table 7 lists only those values categorized here as “societal”; of the three categories, “societal” values were the most widely referenced by members of Congress (see Table 5). Morality values are the most widely referenced societal values overall and for five of the six twenty-year intervals investigated (Table 8).
Discussion

A key conclusion from the above is that the perspective of those within the public administration community on the topic of the legitimacy of the administrative state is, relative to those of legislators, somewhat narrowly focused on governance considerations and on where public administration fits within the constitutional infrastructure. Both Beetham (1991) and Fallon (2005) contend that legitimacy is only in part contingent on “legality.” More important for Beetham is “the justifiability of the rules by reference to shared beliefs” (p. 19). Fallon makes reference to the subordination of legal legitimacy to “sociological” legitimacy relating to, “the acceptance of rules, norms, and interpretive practices” (p. 1848). Implicit in these descriptions is that the basis on which legitimacy can be attributed is very broad. “Shared beliefs” and “norms” covers a very wide array of values any of which can be invoked in ways that have legitimacy implications.

A second key point is that legitimacy attributions can be inferred on the basis of value congruence. On the one hand are the values most closely associated with the civil service. On the other hand are the values that legislators articulate on the context of debates over aspects of the civil service. A mapping of the values thus articulated guides legitimacy determinations: that the values articulated are congruent with those integral to the institution would serve as a positive indicator. The widespread articulation of values incommensurate with the institution would serve as a negative indicator.

In the context of the debate over the civil service, that “efficiency” is so widely articulated by law makers has negative legitimacy implications; the civil service is not and was not designed to be efficient and to the extent it is assessed according to an efficiency benchmark it is likely to always fall short. That “political neutrality” ranks among the five most commonly-
referenced values however, and that neutrality is so closely associated with the civil service represents a positive such indicator.

The contention here is that civil service is not inherently legitimate or illegitimate. The degree to which it is accorded legitimacy can only be assessed on an intermittent basis if and when an issue relating to the civil service becomes a subject of public discourse. During that discourse, debate participants/legislators simultaneously seek to read and to influence the view of their constituents. The values they articulate in so doing are legitimacy made manifest.

A third finding has to do with the value of “morality” which ranks second only to “efficiency” in the prioritized list. “Morality” is not generally listed as among those values that public administration scholars most often cite in reference to the civil service. Yet, as noted above, morality considerations were prominent in the creation of the civil service with widespread references among proponents to the “evils” of the spoils system, to the corruption that that system bred, and to the necessity to “purify” government by insulating officials from political pressures. Van Riper (1958, p. 82) comments with regard to proponents of the civil service; “Curtis, Eaton, Carl Schurz and the rest wished, above all, to purify politics. They wished to apply private, middle-class morality, as they understood it, to public affairs.”

Van Riper (1958, p. 181) further contends that during Theodore Roosevelt’s term of office that the values of “economy and efficiency” began to displace that of morality; a contention which this analysis supports. However, the results show that morality as a value associated with the civil service has proved remarkably durable – morality was the second mostly widely-referenced value for the period 1983-2004. In the debate over the Hatch Act Reform Amendments of 1993, Congressman Wolf (R – Virginia) commented that, “Public confidence in the administrative institutions and processes of Government could be dangerously
undermined should H.R. 20 become law. The public's confidence in the integrity of its civil service must be absolute and that is what current law provides” (Congressional Record, 2/23/1993, p. 3270). During the debate over the Homeland Security Act of 2002, Representative Pelosi (D – California) commented that,

the Republican bill weakens good government laws and civil service protections. By doing so, it invites problems of corruption, favoritism, and low morale that were the reasons that the civil service was established in the first place. Civil service is a backbone of a democratic government. We must preserve it (Congressional Record, 7/25/2002, p. H5634).

In the context of the congruence standard articulated above, whether the widespread references to morality have positive or negative legitimacy implications is contingent on whether and to what extent morality is and can be considered integral to the civil service as an institution. One can infer from excerpts such as those cited above that legislators do make such an association. That association may be attributable in part to the origins of the civil service but also to its association with the value of political neutrality.

The civil service represents an island of neutrality in a sea of partisanship. A 2015 survey for the Pew Research Center (2015) found that only 27 percent of Americans had a positive view of Congress and 50 percent had a positive view of the Supreme Court. In response to the question, “What is the biggest problem with the federal government in Washington these days, the highest proportion of respondents cited Congress followed by gridlock/no compromise, and “politics.”

This study concludes that the perception that the civil service serves moral ends and acts according to moral principles provides an important source of its legitimacy. This finding
further moves the legitimacy discussion out of an exclusively institutional/governance context to a societal context. The ideas of both Beetham (1991) and Fallon (2005) as to the nature of legitimacy allow for the possibility that institutional legitimacy can derive from this broader source. Because the civil service serves primarily governmental purposes does not mean that the attitudes of the body politic in its regard are necessarily limited to those same purposes. Citizens and their representatives can and apparently do, frame its role and its contributions more broadly. This in turn can contribute to a sense that its actions are “desirable, proper, [and] appropriate” (Suchman 1995, p. 574).

The findings serve as a counterpoint to the ideas of Bertelli and Lynn (2006) who contend that the exercise of discretion by administrators can only be accorded legitimacy in the context of the Constitution and who explicitly reject legitimacy derived from, “any personal system of values, no matter how noble” (p. 7). Bertelli and Lynn (p. 65) add, “Public management forswears legitimacy within the separation of powers when it seeks to second-guess and reorient the deliberative results of the political branches and the constitutional reasoning of the judiciary.” This study finds that the ethical orientation that Bertelli and Lynn dismiss serves as an important source of bureaucratic legitimacy.

**Conclusion**

Legitimacy has traditionally been conceptualized as a matter of perceptions of the appropriateness or rightness of a power relationship. Scholars adopting this definition have focused on accessing those perceptions by means of for example, surveys of participants in the power relationship (Gilley, 2006). Beetham’s (1991) definition of legitimacy as a matter of “justification” draws attention to the latent nature of legitimacy, to the fact that one can access these underlying attitudes most commonly in the context of a specific discussion. For Beetham,
legitimacy is, “legitimacy-in-context.” The inevitable challenge to a study that accepts this approach is that of generalizability – how do we know that whatever is uncovered in the context of a specific debate is broadly representative? Can we make valid inferences as to the underlying attitudes of the body politic toward the bureaucracy based on the contentions of legislators in the context of twenty-three debates on specific issues relating to the civil service spaced out over a period of 122 years? According to the “legitimacy-in-context” focus, legitimacy-related attitudes only become manifest and hence subject to examination in such contexts. Accordingly, those who would study legitimacy must accept that constraint. There is further the point that these debates themselves can impact perceptions of legitimacy. It is a dynamic relationship whereby legislators are simultaneously shaping and responding to constituent attitudes.

Taking a broad longitudinal perspective on the topic and focusing on an institution for which legitimizing concerns are of primary importance we can nevertheless gain purchase on underlying attitudes. The approach to doing so here relies for its validity on the centrality of values to an understanding of legitimacy and to what Beetham calls “value congruence.” That legislators have incentives to articulate the values they perceive held by their constituents provides a basis for contending that what they say in debate is representative of those opinions.

There is also the question of “valence.” No attempt has been made here to assess whether, when a specific value is invoked, it is being invoked in a negative or positive context. Investigation reveals that legislators rarely state value associations in so bald a form as “the civil service is (or is not) efficient.” Rather, as the quotes above illustrate, they invoke each value as a standard according to which the institution should be assessed; e.g. “Our slogan must be fewer employees in most of our departments, but greater efficiency in all.” (Congressional Record, 4/29/1920, p. 6285). What has been of interest in this study is the “frames” that these value
references represent. References to efficiency as a value suggest that it is according to operational considerations that the civil service should be assessed. It has been suggested that the relevant values can be usefully categorized according to three such frames; “organizational/operational,” “institutional/governance,” and “societal.”

The most important finding from this study is that for legislators, the societal and operational frames take precedence over the institutional/governance frame which has gained the almost exclusive attention of scholars. An advantage of the realization that bureaucratic legitimacy can derive from sources other than the Constitution is the focus it places on morality. If the civil service gains legitimacy by virtue of its association with morality, then those concerned about the institution should highlight that dimension of bureaucratic activity. The “stewardship” framework suggested by Kass (1990) is relevant in this context: “legitimacy resting in stewardship requires that efficiency and effectiveness be informed by, and subordinated to, the ethical norms of justice and beneficence. Thus, stewardship encompasses the traditional administrative norms of efficiency and effectiveness and subordinates them to the general ethical norms” (p. 114).
Reference List


of the State? (pp. 119-137). Cambridge, UK: Cambridge University Press.


Roberts, C. W. (1989). Other than counting words: A linguistic approach to content


Endnotes

1 The terms “bureaucracy” and “civil service” are used interchangeably in this study. The terms have different connotations with “bureaucracy” perhaps the broader in scope and with the civil service referring exclusively to that portion of the bureaucracy consisting of officials who are neither elected nor appointed by the president. Those same civil servants are the focus of the debate over bureaucratic legitimacy of the bureaucracy and the institution of which they are part is an embodiment of the politics-administration dichotomy that is at the core of that debate. An advantage of a civil service focus is that in light of the interest here in the attitudes of members of Congress it is essential to have an object of study in reference to which Congress periodically acts and thereby serves as an object of discourse. That records of that discourse over an extended period of time are available in archival form provides obvious methodological advantages.

2 See Appendix A for a list of the values by category.

3 The measure is of simple “percent agreement” between the coders. This measure has been criticized on the basis that it fails to account for agreement that would occur by chance. However, in light of that consideration, the level that constitutes an acceptable level of reliability is generally set at 90 percent. For more “conservative” measures of interrater reliability such as Cohen’s kappa or Scott’s pi, what constitutes an “acceptable” level of agreement is generally set at lower levels (Lombard, Snyder-Duch, & Bracken, 2002).

4 Documents reviewed for this purpose included, for example, excerpts from the congressional debate on the Pendleton Act, the civil service portions of the Brownlow Commission Report and the First and Second Hoover Commission reports, and the “accompanying reports” of the National Performance Review on “Reinventing Human Resources” and “Office of Personnel Management.”

5 They were left separate on the basis that ability is the more general of the two; one can have ability without having expertise.
For example, in the context of a debate on the Retirement Act of 1920, a senator commented as follows; “… that is another reason why it is perhaps not necessary for us to deal with the subject matter of the amendment proposed by the distinguished Senator from Montana [Mr. MyEas], for whose great courage, ABILITY, and integrity I have the highest admiration.” Since the word “ability” was not used in reference to the civil service in this instance, it should not be so counted.

A “false positive” in this instance is defined as an instance in which a particular word was tagged by the software as having been invoked in the course of debate over some civil service-related item but which, upon inspection, the word was not used in a value-oriented way.

Following this process, the initial list of 387 keywords/phrases was reduced to 162 keywords/phrases sorted into 38 separate values (see Appendix A). The “lemmatization” feature of WordStat allows the use of “wildcard” characters such as the asterisk so that a single term can capture all possible forms of a word. Thus, using *TALENT* as a keyword (for the value of “ability”) tells WordStat to include “talented” and “untalented”.

Title VII of the Homeland Security Act of 2002 was the Chief Human Capital Officers Act of 2002.
### Table 1
Alternative Legitimacy Schema

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<tr>
<td>ii justifiability of rules in terms of shared beliefs</td>
<td>”strong” sociological legitimacy</td>
</tr>
<tr>
<td>iii legitimation through expressed consent</td>
<td>”weak” sociological legitimacy</td>
</tr>
<tr>
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<td>moral legitimacy</td>
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<td>Year</td>
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- **Pendleton Act**
- **Lloyd-La Follette Act**
- **Classification Act**
- **Veterans Preference Act**
- **Federal Pay Comparability Act**
- **Federal Employees Pay Comparability Act**
- **Retirement Act**
- **Retirement Act Amendments of 1926**
- **Classification Act of 1949 (Hoover I)**
- **Civil Service Reform Act**
- **Hatch Act Reform Amendments**
- **Retirement Act Amendments of 1930**
- **Government Incentives Awards Act**
- **Federal Workforce Restructuring Act of 1994 (NPR)**
- **Brownlow Committee**
- **Federal Employees Salary Increase Act**
- **Homeland Security Act of 2002**
- **Hatch Act**
- **Government Employees Training Act**
- **Workforce Flexibility Act**
- **Ramspeck Act**
- **Health Benefits Act**
- **Federal Salary Reform Act of 1962**
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Figure 1
Congressional Debate as a Means of Assessing the Legitimacy Dispositions of the Body Politic

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CS-related bill > assessment of BP value disposition > expression of value compatibility

Legitimacy of CS

V1? V1 - neutrality
V2? V2 - expertise
V3? V3 - continuity
V4? V4 - morality

vs.

V5? V5 - efficiency
V6? V6 - effectiveness
V7? V7 - individual rights
V8? V8 - etc.