The Organ of Experience: A Defense of the Primacy of Public Administrators in the Design and Reform of Policy and Law

Brian J. Cook

Abstract

Building on Wilsonian foundations, this article present the normative case for a special, central role for public servants in the design and redesign of public law, including constitutions. Central to the author’s argument are Wilson’s characterization of public administration as “the State’s experiencing organ” and his contention that public administration is the primary institution engaged day to day in negotiating the dynamic tension between public and private in a liberal democracy. The author identifies and counters three probable objections to public administrators fulfilling this distinctive role. He concludes with a defense of this role conception for public administration, stressing the obstacles to full realization, and the obligations it imposes on future scholars and public servants.

Keywords

Woodrow Wilson, administrative function, policy reform, constitutional reform

In his most expansive thinking about public administration in a liberal democracy, Woodrow Wilson characterized public administration as testing the

1Virginia Tech University, Blacksburg

Corresponding Author:

Brian J. Cook, Center for Public Administration and Policy, School of Public and International Affairs, Virginia Tech University, Blacksburg, VA 24060
Email: brml27@vt.edu
“suitability” of law, and actively monitoring social and economic life through its constant “contact with the present” (Link, Hirst, & Little, 1969, Vol. 7, pp. 116, 138). Because he regarded law as the codification of social processes, and constitutions as the product of the long historical development of particular regimes, he thus envisioned a critical role for public administrators. They provide the essential observation of and experience with society necessary to guide the formalization of evolving habits, patterns of behavior, and individual and group interactions into new statutes and, ultimately, constitutional reforms.

Wilson’s thinking along these lines was grounded in his acceptance of a distinct public sphere, and more particularly a relatively autonomous, organic State. Despite the resurrection of the concept of the state in sociology and political science several decades ago, there is again great skepticism about the continued relevance or even survival of the nation-state (e.g., Van Creveld, 1999). Further challenges come from the increasingly porous boundary between government and society, as reflected in the complex interactions between administrative agencies and an extensive array of public, quasi-public, and private entities. These organizations seem to be engaged in an almost infinite variety of partnerships for both formulating and realizing public aims. In this starkly new context, does the idea of a special, central role for public servants in the design of public law retain any validity? I argue that it does. This article is an attempt to articulate the normative case for that role.

First, I offer a brief defense for grounding my argument in ideas contained in the writings of Woodrow Wilson. Second, I develop my conception of a distinctive institutional role for public administration out of Wilson’s ideas about the role of public administration in a liberal democratic regime, with special reference to the United States. I focus on his characterization of public administration as “the State’s experiencing organ” (Link et al., 1969, Vol. 7, p. 138). Following this primary articulation of a distinctive role for public administrators in policy design, I consider and respond to three general objections to, and probable constraints on, public servants fulfilling this role. I conclude the article with a defense of this role conception for public administration, including the obligations future scholars and public servants must accept if they are to ensure that public administration as an institution of liberal democratic governance fulfills this vital role.

**Why Wilson?**

Some scholars and practitioners may doubt the legitimacy of anchoring in Wilsonian thinking a normative claim to a special governing role for public administration. Many references to Wilson in the scholarly and practitioner
literature merely cite his famous essay as the anchoring reference for invoking the politics–administration dichotomy, hiding a much broader and deeper body of thought behind a scholarly synecdoche. Sometimes Wilson is referenced as a sort of talisman showing that the writer remembers to acknowledge American public administration’s ancestors. For those somewhat more informed of the extent of his thought and practice with respect to administration, Wilson poses a real problem because of perceived defects in his ideas and his practices. These perceived defects give rise to numerous objections to using Wilson as any kind of guide for new thinking about public administration. I briefly respond to three such objections.

First, some critics find Wilson’s thinking muddled, inconsistent, and even contradictory. Wilson was hardly a great thinker to begin with, and he admitted as much. His great intellectual strength was synthesis. Moreover, Wilson was hardly the first to have changed course in some way during the evolution of his thought and practice. Practice, after all, has a constitutive effect on ideas. Indeed, relying as much as he did on Edmund Burke, Wilson regarded a careful and deliberate adjustment of ideas in response to changing reality as paradigmatic of good leadership in thought and practice. What is especially fascinating about Wilson, however, is how consistent over the long term he was in his thinking and his governing practice reflecting that thinking. His departures from this “uncanny consistency” (Skowronek, 2006, p. 396) mark the principal episodes of failure in his life and work. What may be at the heart of the verdict by some scholars that Wilson’s thinking was fuzzy or contradictory is that he spoke in the language of high principle, against which both he and others often fell short in word and deed. Moreover, he conveyed his ideas and ideals in a number of distinct vehicles, including political speeches, essays for a general readership, and least so scholarly publications. The medium can obscure the real meaning behind the author’s words. None of this, however, justifies ignoring whatever insights about public administration scholars may find in his work.

Second, some may object to relying on Wilson as a primary source for thinking anew about public administration’s role in a liberal democratic regime because Wilson would seem to have little to say to us today, and there are other sources of sound and more coherent thinking about public administration’s role. But why abandon potentially good ideas even though they may have been superseded by more recent voices, which, although appealing, may not have captured a particular perspective present in older thinking? Elsewhere, I have presented an extended case for the current relevance of Wilsonian ideas to public administration theory (Cook, 2007). Simply stated, Wilson was prescient about a number of ideas and practices that became
prominent in public administration scholarship in the two generations after his death. Wilson’s ideas deserve a place in today’s dialogue about public administration’s proper governing role.

Perhaps the most powerful argument against the legitimacy of using Wilson’s ideas as the principal source to make a normative case for a distinct public administration role in liberal democratic governance is that Wilson’s ideas and practices bear the stigma of his racism and ethnocentrism. Indeed, his ideas about governing were extensively shaped by his racialist and southern roots. As both public intellectual and president, he wrote, spoke, and acted in many ways that divided people along racial and ethnic lines. Yet one problem with this objection is that it confuses a normative argument with a moral argument. Wilson himself recognized this distinction in *The Study of Administration*. “If I see a murderous fellow sharpening a knife cleverly, I can borrow his way of sharpening the knife without borrowing his probable intention to commit murder with it; and so, if I see a monarchist dyed in the wool managing a public bureau well, I can learn his business methods without changing one of my republican spots” (Wilson, 1887, p. 220). We can learn from Wilson’s ideas without having to adopt the immorality of his racism as well.

The more serious problem with rejecting Wilson’s ideas as a source of normative argument about public administration is that Wilson’s racism formed the foundation of a conception of liberalism and democracy that is still prominent today. Wilson the “thinker-statesman . . . was led by his racism to rework received ideals and promulgate principles now associated with liberal democracy in America. A reactionary Wilson did not turn liberal, American liberalism turned Wilsonian” (Skowronek, 2006, p. 387). By basing an argument for a distinctive public administration role on Wilsonian ideas, then, I am implicitly tying the argument to a set of ideals and principles that friends of liberal democracy and the American regime still embrace today. I do not claim that the argument I advance here, grounded in Wilsonian ideas, is a definitive case for the governing legitimacy of public administrators. I merely insist that the thesis is worthy of public debate because of its lineage.

**Public Administration as the State’s Organ of Experience**

There is nothing particularly new, surprising, or objectionable in the claim that public administration as an institution, and public administrators as autonomous political actors, do and should play a significant role in the
public policy design process. Beyond this relatively unexceptional validation of a role for the public manager and technically expert public servant in policy making, however, I aim to advance a more vigorous specific argument. First, I contend that what one may call the “experiencing function” is a central and distinct role that must be fully acknowledged in both the study and practice of public administration. Second, I contend that this distinctive contribution is qualitatively distinguishable from and of greater extent and higher quality than any similar policy-making role of any other political actor. It is thus a signal contribution of public administration to governance in a liberal democratic regime. To elaborate, I begin with key components of Woodrow Wilson’s thinking in this regard.

The Line Between Interference and Laissez Faire

During the 1890s, Wilson devoted a considerable share of his most advanced cycle of lectures on administration to defining the sphere of public administration’s reach in a democratic regime. Four interconnected components of that definition are evident in Wilson’s notes. Together, they delineated a remarkably wide scope of action and influence for administration that required a separate, subtle, and careful political case for its legitimacy.

First, Wilson made clear his view that administration did not consist of the mere instrumental function of carrying formal, written law into effect. It went beyond “mere executive management” and a concern only with “the mechanism of government” (Link et al., 1969, Vol. 7, pp. 114-115). Because, Wilson argued, administration was grounded in fundamental political principles and the historical development of constitutions, it was not merely a matter of applying business principles to government. Far more, administration was a part of what constituted the vitality of the state and the living, breathing com motion of public endeavor. Public administration thus had to embody the peculiarities – the “national habit and national sentiment” (p. 116)—of a given nation-state and its origins, growth, and likely future developmental directions.

In this first component of his conception of administration, Wilson put great weight on what he called administrative integration. As an institution—an organ of the state—and as the premier form of modern power, Wilson did not accept that administration could be casually, or worse, theoretically, divided into federal, state, and local spheres. Administration had to be understood as an organic whole, not subdivided into disconnected and antagonistic parts. To do the latter would undermine the study and practice of administration, which had to be aimed at national development and adaptation to
modernity. Connecting administration to such imperative yet practical aims was central to Wilson’s effort at legitimation woven through his analysis.

For the second component of his definition, Wilson identified administration as the realm of pragmatism, of what it was possible for the state to do. It concerned the practical and workable, the sphere of action. It “sees government in contact with the people,” and “Touches, directly or indirectly, the whole practical side of social endeavor” (p. 116). Wilson thus argued that the scope of administrative power was “considerably wider and much more inclusive” than the executive power of classical liberal theory. “Besides the duty of executing positive law, there rest upon the administrative organs of every State those duties of provident protection and wise cooperation and assistance,” whether “explicitly enjoined by [legislative] enactment” or not, that enable the government to fulfill its functions of ministering to the welfare of its citizens (p. 130).

For the third component of his conception of administration’s role, Wilson articulated a particular notion about the relationship between law and administration. The source of Wilson’s conception was Burke’s pronouncement that “the laws reach but a very little way.” Burke contended that “all the use and potency of the laws” depended on “the prudence and uprightness of ministers of state.” Without such men, “your commonwealth is no better than a scheme upon paper; and not a living, active, effective organization” (see Link et al., 1969, Vol. 7, p. 122, note 1). Wilson quoted from Burke on this score in nearly every classroom and public lecture he delivered on administration, on public and constitutional law, and on democratic theory. It is also one of the epigraphs heading chapter 1 of Congressional Government (Wilson, 1887/1981). On its basis, he portrayed administration as tethered to law but not encircled by it.

Both administrative study and administration itself, as an appendage of the state, by necessity had to confront “that great question” concerning the proper functions of government, because “the functions of government are in a very real sense independent of legislation, and even of constitutions.” They are “as old as government and inherent in its very nature.” Furthermore, the volume and detail of positive law masked the reality that “administration cannot wait upon legislation, but must be given leave, or take it, to proceed without specific warrant in giving effect to the characteristic life of the State” (Link et al., 1969, Vol. 7, p. 121). By doing so, administration was “indirectly a constant source of public law. It is through Administration that the State makes a test of its own powers and of the public needs,—makes [a] test also of law, its efficiency, suitability, etc.” (p. 138). Law placed boundaries on administrative action that defined a “sphere of administrative authority . . . as
wide as the sphere in which it may move without infringing the laws, statutory or customary, either in their letter or in their reasonable inferential meaning” (p. 150).

Given these first three components of Wilson’s conception of public administration’s role in a democratic polity, one may infer that he saw administration as occupying the social and temporal space where dynamic social life was translated into knowledge—sometimes incomplete, sometimes inaccurate—and in turn into the raw material for the deliberative and often wrenching process of formalizing and codifying social habits and experience in written laws. Public administration does not just carry out such formal law, nor does it just fill in many of the gaps left by law. It also seeks to learn what it is practical for the state to do in the face of continuing change in habits and forms of social interchange growing out of such forces as economic growth and expanding racial, ethnic, and cultural interaction. Because of its special position in the polity, administration can more systematically assemble abundant material on which to base the reform of existing law, the shaping of new law, and even the reform or reconstruction of constitutions.

The fourth component in Wilson’s analysis was the most extensive, complex, and remarkable aspect of his conception of the place of administration in a democratic regime. Wilson portrayed administration as playing the vital role in a liberal democracy of balancing public and private on a daily basis. Through its actions, administration defines in continuously recurring fashion what does and does not constitute governmental interference in private life, particularly private economic activity. Administration “rests its whole front along the line which is drawn in each State between Interference and Laissez faire” (p. 116). As a result of this aspect of its role, added to its more general station as continuing observer of and participant in governmental contact with social life, administration is “the State’s experiencing organ” (p. 138). By testing laws already on the books, by taking action on cases for which no law directly and obviously applies, and by repeatedly probing for what is practical (appropriate and acceptable, at the very least) in terms of the state’s involvement in the private sphere, the “Real Functions of the Administration are not merely ministerial: they are also adaptive, guiding, discretionary” (Link et al., 1970, Vol. 9, p. 31).

Although Wilson accepted that the bulk of public administration’s work and obligations lie with policy management, he regarded public administration’s engagement in policy development—the making or remaking of laws, and even constitutions—as its most far-reaching and vital task. It is, however, also the work of public administration most difficult to legitimate in regimes of popular sovereignty. Wilson clearly signaled, particularly in his governing rhetoric and practices (e.g., Cook, 2007, p. 190), that he expected administrative
entities to be continuously and substantially engaged in fulfilling this experi-
encing, informing, policy-shaping function. Wilson’s thinking in this regard
overwhelms his rather limited association with the axiomatic division
between administration and policy-making politics enshrined in orthodox
public administration theory. Wilson did insist that in the more instrumental
and mechanistic aspects of policy management and day-to-day governing,
the political maneuvering and blatant party biases acceptable in the policy
formulation process ought not to interfere. Yet viewing governance in a lib-
eral democratic state more broadly, Wilson saw administration continuously
and deeply intertwined with policy making. Indeed, if public administration
was to function as Wilson envisioned it in his most expansive thinking,
administrative entities and the public servants who staff them could not avoid
being engaged in the continuously evolving endeavor to articulate the aims
and aspirations of a national polity.

**The Primacy of Public Administration’s
Experiencing, Informing, Guiding Role**

Wilson’s thinking about public administration’s experiencing function is in
important respects the precursor of what has become an extensive scholarly
literature on policy learning, feedback in implementation, and similar phenom-
ena. A defense of the legitimacy of such a function hardly seems necessary, for
the function is, to borrow Wilson’s phrasing, “as old as government and inher-ent in its very nature” (Link et al., 1969, Vol. 7, p. 121). The ancient roots of the
legitimacy of government’s effort to learn about and adapt to its social environ-
ment are found in the very etymology of the word *statistics* (Rose, 1989). The
cornerstone of any normative argument that public administrators are the pri-
mary and most capable source of guidance on the reform of law, and even of
constitutions, is situated here. Governments have an obligation at least to mon-
itor conditions that bear on the health and safety of citizens. This is clearly an
administrative function, ergo public administrators have an obligation to main-
tain the capacity and devote the resources to monitor social conditions.

Yet Wilson advanced a claim reaching beyond the deeply traditional
administrative function of the state to gather evidence of changing conditions
in its environment. Wilson’s focus was on the very specific and more pro-
found matter of making and remaking public law, including, if appropriate,
constitutions. A defense of that more sweeping influence of public adminis-
tration and public administrators begins with recognition of the nature of
administrative power. Wilson considered administration a distinctive form of
power that flowed from “coordinations of organizations” and “the irresistible
energy and efficiency of harmony and cooperation.” Cooperation was, for Wilson, “the law of all action in the modern world” (Link et al., 1974, Vol. 17, pp. 135-136), and inherent in the nature of administrative entities. Therefore, they possessed a special capacity to organize and coordinate their experiences and gather and share information efficiently.

As Wilson recognized, these are characteristics of any hierarchically structured organization, public or private, that takes advantage of division of labor, specialized training, and the development of special expertise characteristic of the bureaucratic form. For public organizations, of course, the argument is that this special power of coordination and cooperation is specifically oriented toward monitoring and learning from the application of public law. Public organizations also orient cooperation and coordination toward reading and learning from more general engagements with the environment, through the use of discretion in such administration activities as patrol and enforcement, and from broad, general observation. Yet public organizations go further, by also assessing formally the implications of their monitoring, and communicating the formalized findings with the aim of guiding policy making, whether as the reform of existing law or the formulation of new laws.

Nearly all private organizations will, however, have something of a similar aim for the use of their capacities for monitoring their environments and systematically gathering, assessing, and reporting what they have learned because nearly all private organizations are directly affected by public law. They may even take special pains to monitor the suitability of public law, at least with respect to their particular interests. To round out this initial normative case for public administrative organizations as the primary and most capable source of guidance on the reform of law, and even of constitutions, I offer four distinguishing characteristics of public administration’s special experiencing, informing, and guiding role. These characteristics speak to the peculiar character and capacities of public administrators and their organizations that are vital to fulfilling that special role.

First, as Wilson argued, public administration may be understood as the science of choice. Wilson pointed out that as long as the state could do whatever it wanted, at any time, “no science of choice or wisdom” was necessary (Link et al., 1969, Vol. 7, p. 117). But with the advent and growth of the liberal democratic state, with its emphasis on the autonomy and development of the individual and thus the need to define and preserve a sphere of private life relatively free from government interference, decisions by the state about what conditions justified interference, to what extent, and in what form were necessary. Administration, and thus administrative science as well, was put to the task. What public agencies learn from their day-to-day contact with
citizens in carrying out laws, and in addressing situations in which no existing law clearly applies, they can then contribute to the process of fashioning new laws and, if necessary, making constitutional changes. All of this is part of the living, growing, adaptive life of state and polity, including the transparency that is essential for public assessment of adaptations to ensure their success.

Thus the monitoring, information gathering, analyzing, and reporting and recommending functions of public organizations are all aimed toward informing and refining public, collective choice, serving the public interest, especially the perpetually ongoing bargaining over what properly belongs in the public and private spheres. Granted, many administrative agencies may be engaged in the experiencing function with primary concern for how the conditions they face affect their budgets, other resources, and the laws they are tasked with implementing. But all that public organizations do ultimately reflect collective choices made by the public through its representative institutions. In contrast, private entities, although they may be concerned with matters that involve public law, will engage in the experiencing function, including the potential reform of public law, only with reference to their own specific interests. They are not responsible for serving the public interest and generally ought not to be if they are to fulfill their missions and commitments to their owners. Furthermore, they do not generally have to meet the level of transparency demanded of public agencies, especially with respect to the rationales underlying their decisions (but see Fung, Graham, & Weil, 2007).

Second, not only are public agencies responsible for serving the broader public interest in their areas of specialization, they are publicly held to account for their actions, including those associated specifically with the experiencing function. Unlike private organizations, public agencies are accountable to the public at large, and to collective bodies that are in turn accountable to the collective citizenry. There is, of course, some aspect of public accountability even for all private entities. That is, what charters issued by governments allowing these entities to organize and incorporate are in part meant to convey. Private entities that receive public funds are even more extensively accountable to the public’s representatives. But public administrators and their agencies are wholly and exclusively accountable publicly and to public authority. Their experiencing function both serves this accountability and expresses it; that is, by monitoring the suitability of the law, learning about changes in society that affect their areas of responsibility, and otherwise gathering information that might guide the refinement of public law, public organizations are being accountable and responsible.

Related to their whole and exclusive public accountability and responsibility, the third characteristic of public administrators and their organizations that distinguishes the degree and quality of their experiencing function is
their public service orientation. There is certainly some overlap of this characteristic with the first two, but this public service attribute extends further. It centers on the ethic that permeates public organizations, embraced as it is by the people who staff those organizations. And this ethic is not just a matter of professional indoctrination and acculturation; it is tied to the “stable principles” (Wilson, 1887, p. 210) at the heart of the constitutions to which public servants pledge their loyalty through their oaths of office (Rohr, 1986, pp. 186-194). Furthermore, the experiencing function interwoven into public organizations and the staffs who embody these collective values is about preservation as well as refinement and change. It is about public administrators determining in the face of sometimes rapid and disruptive change how to preserve core, and very public, values expressed in public law and embodied in their organizations. This “administrative conservatorship” (Terry, 2003) encompasses the use of monitoring, learning, and information gathering and sharing to make judgments, or to formulate advice for lawmakers, not only about what to change but also what to sustain and preserve.

Finally, whatever experiencing function private organizations and private managers exercise, they do so with an entirely instrumental orientation. They monitor their environment, learn what adjustments in operations they might make, and even test the suitability of public law with respect to their organizations’ largely predetermined ends. Managers and executives of private organizations may consider how they might refine or remake their organizations in light of what they have learned in pursuit of their organizations’ ends, but they are rarely if ever concerned with the refining or remaking of public life. In contrast, public administrators are constantly negotiating the sometimes severe cross-pressures of having to think both instrumentally and constitutively. Although they may be principally concerned with realizing the predetermined public aims conferred on their agencies, in the process of using the discretion they have been granted and the adaptive qualities their organizations may possess, they are recurringly redefining public purposes. They thus alter public life—the life of society as a collective, political community—in the process. This is the true meaning of Wilson’s insight about public administration functioning as the vanguard in the continuous negotiations over where to draw the line between “Interference and Laissez faire.”

**Autonomous Legislators, the Transformation of Governance, and Questionable Legitimacy**

I now turn to an enumeration of several probable objections to the claims I have advanced about public administration serving a special experiencing function—distinctive in kind, degree, and quality from that of other political
actors—to guide the reform and advancement of public law, including constitutions. Space limitations prohibit the exploration of additional possible objections and further elaboration of the critiques I present here. The objections I consider are far reaching because they reflect the peculiar character of the system of separate institutions sharing powers in the United States, the triumph of the public management reforms now well documented by scholars as having occurred across the globe, and questions about the popular legitimacy of the role for public administration I propose.

Institutional Autonomy Versus the Policy-Making Imperatives of Ties That Bind

Do legislators as the first-order policy makers in representative democracies rely primarily on administrators for guidance on the reform of existing law and the formulation of new law? Certainly, a great deal of adjustment and adaptation in public law takes place almost wholly within administrative agencies as a result of discretion granted by legislators. Legislators must tacitly accept a substantial share of these adjustments and adaptations because of the limited resources they can devote to oversight and because they have granted considerable administrative discretion precisely to allow public managers to make such adjustments to public law as a substitute for constant legislative scrutiny and excessively frequent, minor, and potentially destabilizing statutory changes.

Yet legislators obviously rely on a wide variety of sources of information to guide their decision making (see, e.g., Schick, 1991). Over time, as legislatures in the United States have struggled to maintain some semblance of equilibrium in policy-making capabilities with presidents and governors (see Krause, 2002), they have cultivated a wider variety of information sources of greater sophistication to guide collective assessments of the suitability of statutes, as well as decision making about statutory changes or formulation of new law, with a bias in favor of the latter (Schick, 1991).

Individual legislators rarely undertake information search, analysis, and decision formulation in synoptic fashion (Schneider & Ingram, 1988). They are political generalists who rely on “ordinary knowledge” (Lindblom & Cohen, 1979; Schick, 1991) rather than the “professional knowledge” (Lowi, 1991) generated by the likes of social science research and formalized policy analysis. Individual legislators thus rely on a relatively fixed set of contacts for reconnaissance and cue taking about issue positions. At the level of the legislative “enterprise” (Whiteman, 1995) that encompasses legislative staff, however, and even more so at the subcommittee and committee levels, the
search for information about how statutes are working and what statutory changes or new laws may be necessary is richer and deeper. That search goes beyond both “fire alarms” and “police patrols” (McCubbins & Schwartz, 1984) to include more systematic research, even if prepared by particular groups with their own interests and biases. At the institutional level, legislatures long ago recognized the value of creating their own research and analysis arms—legislative research bureaus of various sorts at the state level, as well as the Congressional Research Service, the Government Accountability Office, and the now defunct Office of Technology Assessment (see Bimber, 1996)—to assist them in the lawmaking process.

Considered from a slightly different perspective, iron triangle and subgovernment models of policy making tell us that legislatures, or at least the U.S. Congress, rely primarily on affected interests and administrative implementers for signals about how laws are functioning and what legal reforms or new laws are needed. The issue network and advocacy coalition models, in contrast, suggest a wider spectrum of information sources feeding into the “problem” and “policy” streams (Kingdon, 1995) of the lawmaking process. Thus the scholarly literature on policy making suggests an evolution or transition from legislative reliance on a relatively narrow information base, as indicated by the iron triangle/subgovernment models, to a broader information base as indicated by the more open and fluid network or advocacy coalition conceptions of policy politics.

No matter what the model, however, administrative agencies are prominent players in the policy process, if not the most prominent after legislators themselves. But should administrative agencies be the primary source of information about how laws are working and what changes or new laws should be made? And should lawmakers expect administrative agencies to provide the most valuable information and guidance in this regard? In the U.S. context, at least, there are several arguments against these propositions.

First, in a separation of powers system, legislators certainly ought not to rely exclusively, and perhaps not even primarily, on executive branch agencies for information and guidance on evaluating currently operational statutes as well as for reforming existing statutes or creating new ones. Separate governing institutions with distinct political time horizons and constituent orientations have distinct institutional interests, strengths, and weaknesses. For the theory of separate institutions to work as James Madison envisioned, the two main policy-making institutions must maintain considerable independence from one another. This means developing parallel, if sometimes redundant, mechanisms for policy reconnaissance, policy assessment, and policy formulation or reformulation. In times when the relationship between
the executive and legislative branches is particularly adversarial, or when the
elected chief executive exercises particularly stringent control over executive
agencies and insists on particularly strict subordination of those agencies to
his or her specific policy views and dictates, legislators must exercise special
care in relying on administrative agencies for guidance on policy perfor-
manee and policy reform.

Second, in a separation-of-powers system, administrative agencies are
able to achieve at least some autonomy from their two major political prin-
cipals. The developmental foundations of this autonomy (e.g., Carpenter,
2001) and the verification of the considerable variation in extent and charac-
ter of this autonomy (e.g., Wood & Waterman, 1994) have been reasonably
well documented. For information and guidance on how laws are performing
and whether they should be changed or replaced, lawmakers thus ought not
to rely exclusively, or perhaps even primarily, on public organizations
because those organizations have their own particular interests, ideologies,
and technical competencies (and consequent biases) that will color their
information search and collection, and the analysis and guidance they offer.
Agencies are certainly not exclusively, and perhaps not primarily, dedicated
to aiding legislators in fulfilling their lawmaking responsibilities, if for no
other reason than that legislators are at least some of the time engaged in
satisfying their own interests and those of a select few special constituents
rather than the agencies’ interests, or the public interest generally. On the
other hand, although the executive branch is much more hierarchically struc-
tured and the subordination of public administrators to elected executives is
well established in both law and practice, agencies will not operate wholly
and exclusively to serve the aims of elected executives either, thus reducing
the risk to lawmakers of using agencies as a major source of guidance about
the need for new or revised public law.

It thus may be quite practical for legislators, given their particular strengths
and proclivities as political actors, not to rely primarily on the information,
analysis, and guidance of administrative agencies regarding the suitability of
existing laws, and the need for their refinement or replacement. Legislators
would appear to function best when they can take advantage of a rich and
varied flow of information about policy performance and about the needs of
society for new or revised public law. Yet no less than the U.S. Congress itself
has seen no barrier in the theory and practice of the separation-of-powers
scheme to treating administrative agencies as instruments of Congress, vital to
Congress in fulfilling both its lawmaking and representative functions. This
“legislative-centered public administration” (Rosenbloom, 2000) regards the
subordination of public administrators to the president as merely a matter of
good internal management, and regards the agencies themselves as a valuable
source of information and support to lawmakers for constituency service, reelection, and other aspects of their roles as elected representatives. Such legislative-centered public administration thus means that administrative agencies are a central and nearly constant focus of legislators in most of what they do. From the perspective of legislators as well as administrators, then, the core of day-to-day governance, of collective choice and public action at the national level is the legislator–administrator nexus. Individual legislator offices, the “little legislatures” of committees and subcommittees, and public administrators and their agencies are engaged in almost continuous interaction aimed at mutual adjustment of interests and aims and policy refinement.

In addition, the preference of legislators runs strongly in the direction of searching for opportunities to make new law, and claim the credit that goes along with virgin policy, rather than the much more tedious and less political-credit-rich task of overseeing the implementation of existing law and considering necessary refinements and adjustments. To the extent that legislators concern themselves with oversight, they tend toward a focus on what has gone wrong with implementation and policy management, and not on what changes in law may be required, the latter implying faulty initial policy design. Some other actors in the policy process must take up the slack and give particular attention to the needs for policy refinement that may arise along with the need for wholly new law. Although the density and reach of policy networks are likely to vary by policy area, for nearly every public issue there is also likely to be a surfeit of organized interests and purveyors of self-proclaimed disinterested analysis willing to fill the gap in legislator attention. Even in a networked governance world, however, public organizations retain special, central status because of the political responsibility and legal accountability they have for the laws entrusted to them. Lawmakers recognize this; indeed they have structured the system of policy management to further heighten and clarify the responsibility and accountability of administrators. Even in an information-rich environment, the avenues for information transfer are likely to be the most varied and numerous between legislators and their administrative agents. Despite a system designed to separate policy making and policy management, therefore, the makers and the managers have a distinct and special relationship.

**Governance Transformation, Blurred Boundaries, and the Advantage of Distance**

A second set of objections to the argument that public organizations should be the primary source, and regarded as the best source, of information,
analysis, and guidance about the law’s suitability and need for reformulation or replacement, stems from the “transformation of governance” (Kettl, 2002) that has swept the world in the past three decades. The transformation encompasses reforms associated with the new public management, as well as the multiplication of the “tools of government” (Hood & Margetts, 2007; Salamon, 2002) and the remarkable expansion of networks in the development and implementation of public policy (Goldsmith & Kettl, 2009). When public agencies were the nearly exclusive provider of public services, and thus when their staffs were strongly oriented toward direct contact with clients, with the public at large, and with the rhythms of everyday social life, they may have had extensive, intimate, and exclusive possession of information about the performance of the law, and about what adjustments, adaptations, changes, and new actions were necessary to attend to the ever-changing dynamics of an open society. These conditions still obtain in such prominent public professions as law enforcement and education. With the emergence of a revitalized conservatism, the particular rise of neoliberalism, and the devolution, deregulation, contracting out, and outsourcing those political changes have engendered, however, many of the experiences of the state’s engagement with the private sphere that were special to public administrators and public employees are now also the province of private employees in both for-profit contractors and specialized human service delivery nonprofits. Thus robbed of their exclusivity as the leading edge of the state occupying the boundary between state and society, in part because the boundary itself seems to have become so much more blurred, how can public organizations claim any special status in providing guidance to lawmakers on what changes have become acceptable or necessary and thus should be enshrined in statutes?

As I noted in the previous section, one possible response to this question may be found by considering matters of accountability. Yet the governance transformation has been in substantial part a transformation in conceptions of accountability. Public administrators are now public managers, and they are principally accountable to their overseers for performance—producing defined program outputs and outcomes. This has placed a premium on devising yardsticks for assessing performance, and the change in terminology, from public administration to public management, has signaled that production is now more than ever to be the primary concern of public officials, and public organizations are now more than ever to be operated like private enterprises. The rise to prominence of a managerial orientation in the public sector, and the narrowing conception of public administrators as managers of a production process, is reinforced by the expansion and multiplication of networking. Although once public administrators were primarily engaged in
governing, now governing activity is more broadly diffused across a multiplicity of actors. Where governing authority, and especially responsibility, rest is now much harder to pin down. Public managers are primarily and more narrowly responsible for supervising, or even just participating in, a production process involving a far-flung assortment of public, quasi-public, and private actors.

An emphasis on performance suggests that when public managers fall short of the public production goals set for them, or which they set for themselves, the problem is in their performance, not in the design of policy. With the focus on performance and the imperative to meet production demands, public managers do not have the luxury to contemplate changes in society that may require changes in the underlying statutory authority on which they operate. Indeed, they may not be regarded as the most trustworthy sources of information, analysis, and guidance about refinements in public law or the need for new law, because their interest now lies even more substantially with meeting production benchmarks. The experiencing function thus passes to seemingly more objective, dispassionate third parties—universities, think tanks, and even special interest groups—whose program and policy assessments lawmakers will find easier to tailor to their own political needs and personal policy aims. The performance focus further relieves legislators of the burden of oversight, because they have further rationalized and systematized information gathering and assessment of policy implementation performance; they can simply compare it to program benchmarks and strategic plans.

Nevertheless, the altered architecture of institutional arrangements and governing processes of the much heralded transformation of governance may yet prove to be more a boon than a bane to a special, high-quality role for public organizations in the shaping and reshaping of public law. The more diffuse and far-reaching interconnections characterizing the rise of a networked governing structure give public administrators much greater access to, much more frequent interactions with, and potentially much richer insights into the dynamics of society in the present and into the immediate future of social change than permitted by the more hermetic boundary between public and private defined by mid–20th century public administration orthodoxy. What many public organizations have sacrificed in terms of direct responsibility for service delivery may be compensated for by the much richer environment of social contact, at least with the organized segment of the private sphere, provided by the new governing reality.

Furthermore, although the greater dispersal and privatization of service delivery tasks and other forms of policy execution present increased
complexity and therefore ambiguity about where responsibility lies when troubles arise, the greater diffusion and haziness of public action also afford public administrators some distance from the day-to-day governing fray. The distance may not be much, but just enough, perhaps, to provide them the opportunity for reflection not only about questions concerning where responsibility and accountability might lie in the more tangled governing reality of networks, but also about the most basic questions of public administration. Has the agency chosen the most appropriate enabling actions to carry out this law? Is this law in its current form really suitable for confronting the problem it was designed to address? What new or altered conditions require adjustments to the agency’s implementation strategy, or to the law itself? What, overall, can the agency learn from the execution of this law that may guide future policy making? Because of their primary obligation to the public good, no political actors save public administrators can fully bear the responsibility and exercise the capacity for asking and trying to answer such questions.

**Constitutional Reform and Tacit Legitimacy**

It is one thing to assert that public organizations should play a central role in informing and guiding the refinement and adaptation of public law to changing societal circumstances. But to claim that this role may extend to constitutional reform seems patently absurd. The courts are the province of constitutional examination and change. They should not take their cues from mere bureaucrats. Of course, my argument is not dependent on the claim that public administrators should be the sole source of guidance about constitutional adaptation, only that they have a distinctive role in providing critical information and guidance that might lead not just to statutory but also to constitutional change. My claim follows from Woodrow Wilson’s conception of the place of public law, including constitutions, in political development.

Reflecting the lessons he drew from the development of the English commonwealth, Wilson regarded public law, especially constitutions, as the culmination of the long development and accumulation of habits and mores of a people. Indeed, it was not until their social and political development were long underway that a people’s sense of themselves as a distinctive polity could be codified in a written constitution, or in a recognized body of common law and government acts. Although a constitution may be the culmination of a particular stage of development, no polity can be static. The dynamism and disruptiveness of modernity assured that, Wilson concluded. Hence in any liberal democratic regime, the further development and adaptation of public law, including the constitution, is dependent on what Wilson described as the state seeing “government in contact with the people” and
remaining in constant “contact with the present.” Again, this is the role that Wilson theorized for public administration. Yet he did acknowledge, long before it was recognized in more recent scholarship (e.g., Skowronek, 1982), that the courts played a central role at a critical stage in American political development, serving as perhaps the principal vehicle for administrative adaptation and integration, linking individual citizen demands to national interests so as to create a true national polity (Wilson, 1908). Hence, in addition to the courts being by far the primary if not exclusive source of constitutional examination, reinterpretation, and change in purely legal terms, one may argue that the courts, including especially national constitutional courts like the U.S. Supreme Court, still play a vital role in harmonizing individual and group interests with national interests, continually probing the line between “Interference and Laissez faire.” This greatly diminishes any such claims for public administration.

Continued popular legitimacy of the separation-of-powers design generally and of the role of the courts in particular reinforce this argument. As in the case of their elected representatives, with the public at large there is likely to be tacit acceptance of a substantial level of influence for public administration in policy assessment, adaptation, and reform. The legitimacy of far-reaching bureaucratic influence on the shape of the law is, however, likely at best to be on shaky ground. This stems from the general decline of public trust in government since the 1960s, well documented in the United States. With a few notable exceptions, this decline in trust has extended to a host of both public and private institutions. Among national public institutions, however, citizens express far greater trust and confidence in the U.S. Supreme court than in the executive and legislative branches (NORC, 2007, pp. 236-238). When more than half of the respondents to the General Social Survey disagree with the statement that “most government administrators can be trusted to do what is best for the country” and another one fifth are indifferent (p. 1526), the normative case for substantial, even central, public administration influence on the shape of public law, and especially the Constitution, is weakened considerably.

That the courts continue to play a significant role in harmonizing individual and group interests with national interests through statutory and constitutional interpretation and adjustments to both common law and constitutional law is not, however, a significant threat to my claim for a special, high-quality role for public organizations in the shaping and reshaping of public law, including constitutions. Administrative agencies frequently appear before the courts as parties to cases and controversies, and the courts have shown a general deference to administrative expertise. Usually, agencies only get into trouble when they fail to meet established standards of
procedural justice, such as when their actions are unbalanced or arbitrary, or their decision-making processes are insufficiently transparent. Otherwise, although administrative agencies may be seen as instruments of the courts for furthering the latter’s aims to make adjustments among contending interests and further refine common, statutory, or constitutional law, one may also see the matter in just the opposite light. The judicial process is an additional vehicle by which public administration may enlighten lawmakers about changing societal conditions, and through their role as parties to major cases, public administrators may use their experience, knowledge, and expertise to guide the policy process toward policy refinements, new policy, or critical adjustments to the fundamental laws of the land.

This leaves questions of legitimacy and the challenge of the antigovernment strain in the public philosophy of the American polity. Not only was the larger part of the Declaration of Independence a litany of complaints about what the newly proclaimed Americans considered illegitimate administrative actions taken under the Crown’s auspices, but the founding act of the constitutional convention and the ratification debates that followed unleashed a fierce struggle over the legitimacy of a particular conception and design for governance, including a defense of a relatively robust administration. The rise of a more definitively administrative state roughly a century later renewed the legitimacy struggle. To some extent, that struggle is ongoing, because all the arguments advanced in the United States in favor of a legitimately far-reaching and powerful role for unelected administrators are partial or inadequate in some way. Some citizens are quite vocal in their contempt for public bureaucracy, and many are ambivalent, to say the least, about the effectiveness of government administration. Yet few scholars and other thinkers, let alone citizens at large, have anything to offer in the way of functional substitutes. One may safely conclude that the tacit legitimacy of administrative power is the default setting in current American political culture, and this extends to acceptance of a central role for public administrators and their organizations in information gathering, assessment, and assertive guidance of the process of reform and renewal of public law including the “working Constitution” (Long, 1952).

**Overcoming Bureaucratic Pathologies and the Cult of Performance Management**

The central obstacles to the full realization of the special governing role I have put forth lie within public administration itself. These twin obstacles are rooted in the nature of formal organizations, especially public organizations, and in the evolving values of the new governance.
With respect to the nature of formal organizations, the challenge to my argument arises in particular from how organizations socially construct knowledge—how they define what constitutes facts, how they organize the search for information, how they formally assemble that information, and how that information becomes instilled in organizational routines. Here I am using the terminology and insights of Lynn Eden’s (2004) superb study of the failure of the U.S. defense establishment, and particularly the U.S. Air Force, to take account of the likelihood of devastating mass fire from nuclear attack. Both civilian and military administrators thus failed to guide lawmakers about the proper design of U.S. nuclear weapons policy, especially the size and cost of the nation’s nuclear arsenal. As Eden argues, the “organizational frames” that develop out of the professional specialties and value-laden choices that define the founding of a public organization strongly influence what members of the organization are capable of seeing in their immediate environment and the wider society that may be relevant to their organizational goals and the missions lawmakers have given them. As “knowledge-laden” routines evolve based on what organizational members can detect, those routines further shape or reinforce the frames the organization uses to conduct information searches, assess the information gathered, and develop formal recommendations and general guidance to lawmakers regarding revising policy or creating wholly new policy. What one might call “organizational myopia” may be widespread throughout most public organizations and a hindrance to the experiencing function.

The challenge to my argument from the evolving values of the new governance arises from the juggernaut that performance management has become. The extent to which public administrators have inculcated the precepts of the new governance, especially the focus on performance management, is remarkable but not altogether surprising. The precepts of performance management are consistent in many ways with the old public administration orthodoxy that still survives in the culture of many public organizations and in American government more generally. Nor is performance management wrong-headed. Promoting good performance in public management is valuable in itself, and realizing better organizational performance reinforces legitimacy and serves the public interest well. But the embrace of performance management in the public sector may be getting out of hand, becoming an end in itself. This would signal the loss of the critical perspective among public administrators that they are stewards of public law in a larger sense. A wholesale focus on the part of public managers on their own and their organization’s performance threatens the loss of their vital role as the most careful critics of the policies for which they are responsible. The nation
needs public servants with a sufficiently broad perspective on the policies they carry out so that they consciously and continuously monitor society for changes that may render policies less effective or even obsolete. A broader perspective on their role than merely meeting benchmarks and targets will give public managers the courage, in facing likely criticism of their performance, to assert themselves in offering guidance to policy makers when they are convinced that fine-tuning, more substantial reform, or replacement, is called for. Ultimately, they may even find the courage to call for more sweeping changes to the core constituents of the regime.

It is time for public administrators to lay forceful claim to their primacy in the experiencing, informing, and guiding function, which responds to the demands for adjustments that even carefully crafted public laws inevitably require. This will necessitate clearly delimiting the boundaries of a public management orientation, making it subservient to the core principles of self-government. Those principles stress that law must be made, remade, or replaced only on careful reflection and with due diligence in selecting only those adjustments that serve the common good. By claiming for themselves the indispensable governing role as principal organ of experience, public administrators can more fully satisfy their aspirations to stewardship of public law. This is a challenge the next generation of public administration scholars and practicing public administrators must fully embrace if they are to carry on as a body of citizens with a sustained concern for the health of the whole regime.

Declaration of Conflicting Interests
The author declared no conflicts of interests with respect to the authorship and/or publication of this article.

Funding
The author received no financial support for the research and/or authorship of this article.

References


**Bio**

Brian J. Cook is a professor in the Center for Public Administration and Policy at Virginia Tech. His general research interests include public administration and constitutionalism, public administration in American political development, and environmental policy. His most recent book is *Democracy and Administration: Woodrow Wilson's Ideas and the Challenges of Public Management* (Johns Hopkins, 2007).