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Stephanie P. Newbold
American University

Big Issues Facing Contemporary Public Administration Theory

Toward a Constitutional School for American Public Administration

Stephanie P. Newbold is an assistant professor of public administration at American University. Her research interests include the intellectual history of American public administration, constitutional theory, ethics, and the legal environment of public management.
E-mail: newbold@american.edu

A central tenet of The Federalist *is that good government depends on good administration. Two hundred and twenty-three years have passed since Publius began writing this extraordinary text. As American democratic institutions have grown larger and more complex than what the founders ever imagined, many of the ideas expressed in* The Federalist *remain as relevant today as when James Madison, Alexander Hamilton, and John Jay first advanced them in 1787. The author argues that public administration should move toward a constitutional school that would connect the U.S. Constitution with all aspects of American public administration theory and practice. While the author readily acknowledges this new school's apparent defects, its most important contribution recognizes that the American Constitution matters, and indeed should serve as a lodestar for our entire field.*

The purpose of this article is to demonstrate in clear, articulate terms why constitutional tradition and rule of law should serve as the foundations of public administration scholarship in the United States.

Moving toward a constitutional school for the field of public administration would improve the quality of scholarship associated with how to maintain and preserve core democratic-republican values embedded in the American constitutional tradition. Those of us who are part of establishing this movement define the constitutional school as a group of public administration scholars and practitioners, joined in a loose confederation, characterized by an interest in the principles embodied in the U.S. Constitution as the basis for our research and practice.[1] We see the Constitution as *the* normative base for our scholarship, and it demands that we reemphasize and reestablish a greater commitment to how the rule of law pervades public administrative management in its entirety (Rosenbloom 2002, 2003). Those associated with the constitutional school would most likely still agree with Ronald Moe and Robert Gilmour's position, one they established 15 years ago: "Today, public administration has largely abandoned or forgotten its roots in public law—and has accepted, to varying degrees, the generic behavioral principles of management as taught in schools of business" (1995, 135).

The purpose of this article is to demonstrate in clear, articulate terms why constitutional tradition and rule of law should serve as the foundations of public administration scholarship in the United States. Without the acceptance of this norm, American public administration will find itself unable to embrace the intellectual underpinnings that legitimate the field in its entirety (Cook 1996; P. Cooper 1997, 2006; Lee and Rosenbloom 2005; Moe and Gilmour 1995; Rohr 1986, 1998, 2002; Rosenbloom 1971, 1983, 1987, 2003; Rosenbloom, Carroll, and Carroll 2000; Rosenbloom and Kravchuk 2005; Rosenbloom and O'Leary 1996; Spicer and Terry 1993a, 1993b; Terry 2003; Waldo 1948; Wamsley et al. 1990). This movement provides three distinct ways to improve public administration scholarship: it emphasizes the intellectual and practical value of the Constitution to the American administrative state; it establishes a consistently used term that works to encourage a specific type of dialogue; and it helps demonstrate how the American Constitution pervades all areas of public administration scholarship and practice.

The Intellectual Origins of Moving toward a Constitutional School

Michael Spicer and Larry Terry first coined the term "constitutional school" in their provocative forum on "Public Administration and the Constitution" for a 1993 issue of *Public Administration Review* (*PAR*). Several of us knew Terry quite well, and years after *PAR* published this manuscript, John Rohr and I asked him to expand on his understanding of this concept. Terry elaborated with great intellectual energy on this point and instructed us that it was

Alexander Hamilton's position in *Federalist 27* that had inspired him to create this term. He was particularly influenced by Hamilton's idea that "[the people's] confidence in and obedience to a government will commonly be proportioned to the goodness or badness of its administration" (Cooke 1961, 172). Creating a constitutional school for American public administration, according to Terry, would allow more scholars *and* practitioners opportunities to determine whether the administration of our government was working to meet the citizenry's needs in responsible, efficient, effective, ethical, legal, and constitutional ways. Those who are part of moving toward a constitutional school also want to encourage public administration scholars, practitioners, and students to pay more attention to what academics in other fields are publishing with regard to issues of constitutional significance. What we can learn from those who are writing on issues focusing on American constitutionalism holds the potential to legitimate the value that rule of law brings to the American administrative state even further.

Terry maintained that incorporating Hamilton's eighteenth-century argument into the intellectual framework and foundation for the constitutional school was essential, because it provided the necessary theoretical basis to legitimate the contemporary value of this idea. In order for the public to maintain confidence in the integrity of administrative agencies, public servants must demonstrate constitutional competence, respect for the rule of law, and sound discretionary judgment in all aspects of their decision-making processes (Rohr 1998; Rosenbloom, Carroll, and Carroll 2000; Terry 2003). This way of thinking complements one of Terry's key arguments in support of administrative conservatorship:

> When public administrators take an oath to uphold the Constitution, they are making a moral commitment to the continuance of constitutional processes that encompass particular values, beliefs, and interests. This commitment is expressed in practical terms through their fidelity to duty in the administration of governmental institutions, including the values embodied in the Constitution. (2003, 28)

The American Constitution not only is vital to the preservation of the administrative state but also provides one of the most important sources of legitimacy for the field as a whole (Rohr 1986).

David Rosenbloom (1971) has long examined the connection between the federal civil service and the American Constitution, a relationship he argues is not only important but also undervalued within public administration. Rosenbloom's work helps legitimate the need for a constitutional school, because it demonstrates how constitutional tradition and the rule of law characterize American public administration, especially with regard to the rights of civil servants and the conception of those rights in both theory and practice. In their review of Rosenbloom's work *Federal Service and the Constitution,* Charles Levine and Lloyd Nigro discuss an increasingly important aspect of federal public management:

> Rosenbloom documents an accelerating trend toward narrowing the gap between the political and legal rights of public employees and those of the general citizenry. While this trend liberalizes the public employment relationship, Rosenbloom worries about the implications of constitutional-legal equality for public employees and its potential impact on the role of public bureaucracies in our political system. He concludes that in the future the capacity of political officials to control the selection and behavior of employees will be reduced and that "the change will probably encourage an increase in the role that civil servants will play in the political arena." (1975, 100)

Two important U.S. Supreme Court cases provide clarification of Rosenbloom's excellent point. *Elrod v. Burns* (1976) and *Branti v. Finkel* (1980) dealt with the concept of patronage dismissals. Both focused on the constitutional question of whether newly elected officials could discharge previous non–civil service appointments made by outgoing administrations because they did not belong to the same political party. In both cases, the Supreme Court ruled in favor of the removed official. In reviewing the *Elrod* case, Rohr makes a keen observation: "The decision was a stunning illustration of the marked tendency in American constitutional law for individual rights to trump the claims of institutional interests—in this case the interest of political parties . . . had traditionally been regarded as vital components of democratic government" (2002, 124). Rohr's reflection on *Branti* also illuminates another key area of constitutional concern for American public administration: "The ultimate inquiry is not whether the label 'policy maker' or 'confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved" (2002, 127). Taken together, these two cases provide noteworthy examples of how public administration should incorporate issues of constitutional significance into an organized school of thought in an effort to inform scholars and practitioners about how the Constitution and the rule of law permeate public administration, public management, and the democratic governance process, especially in times of political and administrative transformation and change.

Rosemary O'Leary and Charles Wise provide another useful example that illustrates the value of moving toward a constitutional school in their research on how judges and courts are "becoming increasingly active in their oversight of administrative agencies" because of the "new partnership that has emerged between judges and administrators" in recent years (1991, 316, 317). The hope of a constitutional school is that when scholars and practitioners write about and discuss issues of constitutional and legal significance, they will consider how this school of thought informs the field's institutional and intellectual heritage. Such efforts are precisely why Phillip Cooper argues that "[p]ublic law provides a foundation for administration and is essential to the infrastructure on which administrative institutions, and most other institutions of society for that matter, operate" (1997, 105). These types of unified perspectives could also serve as a useful attempt to bridge the theory–practice divide within the larger public administration community.

While *Federalist* doctrine provides the theoretical foundation for establishing a constitutional school, the application of this approach has important, practical ramifications for the administrative state. For example, the recent, highly regarded supplemental issue of *Public Administration Review* (volume 67, 2007) analyzing the government's response to Hurricane Katrina in 2005 would

have provided an ideal forum for a supporter of the constitutional school to discuss how Hamilton's observation in *Federalist No. 27* remains as relevant today as it was in 1787. In this issue of *PAR,* scholars and practitioners examine a number of important topics relating to the failed levee system, the government's emergency response plan, broad issues affecting public sector management and decision making, the consequences of economic status and race, and even federalism, especially for those most negatively affected in the Lower Ninth Ward. This collective analysis, as informative as it continues to be, overlooks the practical notion of what happens to the institutional integrity of a republican, constitutional regime that undermines the positive relationship between the administration of publicly funded disaster preparedness programs as well as emergency management mechanisms to respond to catastrophic natural disasters *and* the citizenry's confidence in their government to meet the needs of those most directly affected by extraordinary calamites outside their control. In a word, it substantiates Moe and Gilmour's observation that "public law is the under-appreciated 'cement' that binds the separated powers of the administrative state, ensures political and legal accountability of its officials, and restrains abuses of administrative discretion and conflicts of interest" (1995, 138).

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Those who are part of the constitutional school, as well as those who argue that public administration should focus more on how upholding the rule of law improves our continual efforts "to form a more perfect union," would have relished an opportunity to demonstrate that a government that fails to meet the needs of the citizenry, especially in times of crises, contradicts some of the most important themes that Publius advocated in *The Federalist.* Conserving democratic-republican values and the constitutional integrity of public administrative agencies that operate in a complex, separation of powers government is not an easy task, but it is a necessary one (Rainey 2003; Shapiro 1988).

On President Barack Obama's first day in office, he signed an executive order focusing on increased transparency and rule of law within the executive branch, particularly with regard to the Freedom of Information Act. This, he maintained, would be a hallmark of his administration. According to President Obama, "Public service is a privilege. It's not about advantaging yourself. It's not about advancing your friends or your corporate clients. It's not about advancing an ideological agenda or the special interests of any organization. Public service is simply and absolutely about advancing the interests of Americans" (*The Caucus* 2009). The president's remarks invoked James Madison's great observation in *Federalist 51:* "The interest of the man must always be connected to the constitutional rights of the place" (Cooke 1961, 349). Leaders of the American republic must live up to a higher notion of public virtue, and, in order to carry out Madison's expectation, public servants must maintain constitutional competence and a thorough recognition of how the rule of law and discretionary judgment affect the citizenry they serve so that the preservation of the nation's constitutional integrity is maintained. A careful examination of the historical evolution of American constitutional tradition demands no less.

A Government of the People, by the People, and for the People: How Establishing a Constitutional School Advances Democratic Governance

Proponents of the constitutional school would likely champion the following observation by Charles Goodsell: "The quality of public service in the United States is vastly underrated. Our government's administrative agencies and those who work in them are commonly portrayed as inefficient, incompetent, and wasteful—and often uncivil and devious as well. This is simply not true" (2004, xi). Like the Progressive Era in the late nineteenth and early twentieth centuries (Goodnow 1900; Wilson 1887), the President's Committee on Administrative Management during the Franklin D. Roosevelt administration (1937), and the New Public Management movement of today (Considine 2001; Loffler 1997; Osborne and Gaebler 1992; Peters 1992), administrative scholars and practitioners have long championed the need for government to work efficiently, effectively, and economically. In fact, Hamilton opens *Federalist 1* with the staunch assertion that the "unequivocal experience" under the Articles of Confederation led to the "inefficacy of the subsisting Foederal [*sic*] Government," and in order to secure the "existence of the Union," the majority of the states had to ratify the Constitution (Cooke 1961, 3).

The field traditionally recognizes that these reform efforts attempted to apply efficient public administrative management strategies to the governing of the nation. But they also represented important historical, political, intellectual, and institutional opportunities to "reconcile traditional democratic institutions with the requirements of new administrative technology" (Fry and Raadschelders 2008, 309). By means of contrast, scholars such as Terry Cooper (1991, 1994; Cooper and Wright 1992), Rosemary O'Leary (O'Leary and Wise 1991, 2003), John Rohr (1986, 1998, 2002), David Rosenbloom (2002; Rosenbloom, Carroll, and Carroll 2000), Larry Terry (2003), Dwight Waldo (1948), Gary Wamsley et al. (1990), and Charles Wise (1998, 2001) have championed the notion that it is often just as important, and perhaps even more so, for government to implement public policies and rely on managerial techniques that demonstrate values associated with responsibility, representativeness, responsiveness, rule of law, and especially constitutional competence.

Yong Lee and David Rosenbloom (2005) present a useful distinction between utilitarian and instrumental values versus contractarian principles for public sector decision making that demonstrates where the constitutional school could and should fit within the broader public administration literature. Lee and Rosenbloom maintain,

> Utilitarianism leads public administrators to judge the desirability of decisions and other actions in terms of cost-benefit ratios. Instrumentalism focuses on cost-effectiveness, that is, making government "work better and cost less." All modern administrative approaches to funding the public sector are based on some mix of utilitarian and instrumental thinking. (2005, 8)

By contrast, Lee and Rosenbloom point the field's attention to the differences between economically oriented public budgeting decision making and the need for American civil servants to apply constitutional competence so that they are able to protect the individual rights of citizens while simultaneously upholding the rule of law more efficiently and effectively:

> The contractarian judges do not have to consider how else public dollars headed for the jail may be used; the utilitarian-instrumental public budgeters routinely give short shrift to the rights of the prisoners. The reasonably competent public servant has to combine both perspectives: Within the framework of the discretion available to administrators, the rights of the detainees should be protected in the most cost-effective fashion. Individuals' constitutional rights, whether enumerated or nonenumerated, cannot easily be sacrificed for the greatest good of the greatest number. (2005, 8)

. . . it would be advantageous for twenty-first-century administrative scholars and practitioners to think about [Dwight] Waldo's position regarding the need to connect democratic values with economic ones as *a* way to advance and improve the democratic governance process.

Their comparison of the utilitarian and contractarian perspectives is quite helpful in determining how establishing a constitutional school could broaden our understanding for how the rule of law substantiates our democratic-republican regime in both theory and practice.

Joel Aberbach and Bert Rockman, in their 30-year analysis of the executive branch at the U.S. federal level, observe, "A government of laws, as Americans often like to think theirs is, is a government thick with safeguards against the arbitrary or capricious use of power. Many of those safeguards also prevent administrators from responding in commonsense ways that might be regarded as responsive or adaptive" (2000, 14). In the context of public administration reform movements and the examination of administrative management in general, their empirical observations illustrate some of the practical difficulties that can occur when governing in a separation of powers regime. Even so, we should not overlook the fact that when government works both efficiently *and* responsively, the citizenry's opinion of it usually increases (Barnard [1938] 1968; Cooke 1961; T. Cooper 1991; Goodsell 2004; Rosenbloom and Kravchuk 2005; Selznick 1997; Terry 2003; Waldo 1948; Wamsley et al. 1990). By contrast, when government leaders and administrative agencies fail to meet the needs of the citizenry, particularly during times of crises, as was the case in the early stages of the Great Depression and in the more recent response to the victims of Hurricane Katrina, citizen confidence in government naturally decreases.

Dwight Waldo, like Alexander Hamilton, was keenly aware of this dynamic, and he provided one of the most important, yet overlooked, observations about the relationship between efficiency and democracy within the American administrative state:

> A government that is *really* democratic is also an efficient government: it is sensitive to popular demand, it realizes popular will with intelligence, honesty, economy, and dispatch. Contrariwise, really efficient government is also democratic: it ministers to the real needs of the people it represents. (1948, 134)

Waldo's perspective largely comes from his comparison of the ideological differences between the American founders and the early twentieth-century administrative reformers who championed principles commonly associated with scientific management, one best way to organize, and economic efficiency.[2] However, it would be advantageous for twenty-first-century administrative scholars and practitioners to think about Waldo's position regarding the need to connect democratic values with economic ones as *a* way to advance and improve the democratic governance process.

In their timely reflection on Waldo's seminal work, David Rosenbloom and Howard McCurdy draw attention to this precise point: "True democracy represents the will of the people; true efficiency represents the selection of methods that are correct with respect to an unbiased standard, irrespective of what people desire" (2007, 204). Organization theorists, like some public administration scholars, have also examined the need to expand the general intellectual conceptualization of efficiency. In particular, Chester Barnard's classic work, *The Functions of the Executive,* provides a level of insight that illustrates important difficulties that often arise in any organizational environment when leaders fail to understand the concept of efficiency in multidimensional terms:

> To have an organization that lends prestige and secures the loyalty of desirable persons is a complex and difficult task in efficiency—in all-round efficiency, not one-sided efficiency. It is for these reasons that good organizations—commercial, governmental, military, academic, and others—will be observed to devote great attention and sometimes great expense of money to the non-economic inducements, because they are indispensable to fundamental efficiency, as well as to effectiveness in many cases. ([1938] 1968, 94)

Those who champion the need to move toward a constitutional school do not argue that the only way to study and practice public administrative scholarship is through a constitutional lens. In a word, we want to draw attention to the value that studying American constitutional theory and the rule of law bring to the study and practice of public administration. In order to accomplish this objective, several dynamics must occur.

First, underscoring the importance of American constitutional theory to public administration demonstrates that the legitimacy of the administrative state is found only within the nation's constitutional heritage (Rohr 1986). Second, developing a consistently used term that encourages discussion and debate on issues of constitutional and legal significance is a critical element of this intellectual endeavor. Third, we want to encourage scholars with expertise in areas such as public policy, organization theory, law, ethics, and public management to direct attention to how the Constitution permeates almost every intellectual dimension of public administration theory

and practice. For example, Stephanie Newbold (2008) has initiated a discussion of how the constitutional principles of federalism and separation of powers provide an excellent way to teach and study organization theory as it relates to managing public sector organizations in the United States. Rosemary O'Leary and Charles Wise (2003) have discussed the role of the courts in shaping public management as well as the legal responsibilities of public institutions to the administrative state. In their discussion of the evolution of U.S. Supreme Court decisions from 1900 to 2000, O'Leary and Wise make a striking observation: "As federal court supervision of public institutions has stretched over decades, the Supreme Court has seen the necessity of nudging the district courts toward ending their supervision of public institutions. As a result, the Court has begun to play a more directive role in indicating which considerations district judges should use when terminating judicial decrees in institution cases" (2003, 180). The hope of a constitutional school is to create and provide more opportunities for the emergence of this type of dialogue in our literature and at our conferences in order to demonstrate how this area of scholarship advances the field's understanding of the American Constitution and the rule of law and their direct and indirect relationships on the administrative state and its democratic institutions.

Gary Wamsley has often argued that public administrative agencies demonstrate how the United States represents an ever-democratizing constitutional republic.[3] According to Wamsley, the American state has not always lived up to the high standing moral principles espoused in its Declaration for Independence or in its Constitution, but public administration is the one entity of government we can look to that is constantly working to ensure that the normative values embedded within our constitutional heritage are conserved. Many examples exist throughout American history that support this argument, but here we will simply focus on one.

The Supreme Court's landmark 1954 decision in *Brown v. Board of Education of Topeka, Kansas,* which overturned *Plessey v. Ferguson* and made it unconstitutional to segregate public schools according to race, infuriated much of the Jim Crow South. The southern states' refusal to abide by the Court's decision forced President Dwight D. Eisenhower in 1957 to send the National Guard into Arkansas to ensure the safety of African American school-aged children who were entering all-white public schools for the first time. This example, as unfortunate and embarrassing as it is today, points to an important constitutional principle that Madison described in *Federalist 10.* It is always possible for a majority to infringe on the individual rights and constitutional protections of a minority. Indeed, as the American constitutional republic has grown and developed since its inception, the courts, especially the Supreme Court, have played an integral role in helping to preserve the individual rights and constitutional protections of minorities. Administrative agencies, as a result, have also worked to implement many of the necessary policy changes, insisted on by the Court, in an attempt to conserve the nation's constitutional tradition and many of the core democratic principles equated with American republicanism.

Justice Stephen Breyer has publicly contended that the Court's ruling in *Brown* and President Eisenhower's subsequent decision to force much of the South to comply with the Court's opinion is a valuable example that illustrates why the Supreme Court should have the last word in matters of extraordinary constitutional significance. Breyer maintains this position not because the Court's rulings are always right, but because one branch of government must be insulated from politics[4] in order to carry out the will of the founders and to defend the constitutional rights of individuals and groups who *might* be discriminated against by an overbearing, oppressive majority.[5]

Rosenbloom (1987) has also focused the public administration community's attention to the idea that a "new partnership" has emerged between civil servants and the judiciary. He maintains that three distinct conditions exist, largely established by the courts, that enable this partnership to materialize: "The declaration of new constitutional rights for individuals as they come into contact with public administration; efforts to use adjudication to obtain broad reforms of public institutions such as schools, mental health facilities, and prisons; and the Court's clarification that public administrators have qualified, but not absolute, immunity within the scope of their official duties" (1987, 76–77). Rosenbloom's analysis demonstrates the type of partnership that the courts maintain with public servants and the agencies in which they serve. This type of relationship builds on the nation's separation of powers system of government and provides insights into how the courts, like Congress (see Rosenbloom 2002), play an active, participatory role in the administrative state. Scholars and practitioners interested in these types of institutional and constitutional changes are precisely the type of audience the constitutional school hopes to attract.

Moving toward a Constitutional School: A Bold, Much-Needed Addition to Public Administration Discourse

When Philip Selznick discussed the need to cultivate a political orientation for developing a more comprehensive understanding of institutional leadership, he also articulated a position that resonates with efforts to establish a constitutional school: "The link between 'polity' and 'politics' must constantly be kept in mind" (1957, 61). The parallels between Selznick's argument and the case of the "Revolt at Justice," highlighted in Amy Gutmann and Dennis Thompson's edited volume on cases affecting ethics and politics, points to the need for public administration to pay greater attention to constitutional tradition and the rule of law. The "revolt" occurred when lawyers for the U.S. Justice Department refused to comply with the Richard M. Nixon administration's orders not to integrate public schools, as the high court had ordered in 1954. Their acts of official disobedience illustrate an important example that highlights Selznick's observation regarding the need to distinguish between polity and politics. Gary Greenberg's personal description of this case is striking. The reasons why Greenberg and his colleagues did not merely resign their positions within the Justice Department are constitutionally intriguing and particularly insightful for the argument about why the Constitution should be at the center of American public administration theory and practice. As Greenberg recalls,

> While pledged by our oaths to support and defend the Constitution and bound by duty to follow our consciences and adhere to the law, we faced a situation in which the Administration had proposed to act in violation of the law. We knew that we could not remain silent, for silence, particularly in this Administration, is interpreted as support or acquiescence. Only through some form of protest could we live up to our obligations as lawyers and as officers of the United States. . . .

> For the duty to serve the law, to promote the administration of justice, to support and defend the Constitution is more than a negative command; it is more than a "thou shalt not." It is an affirmative duty to act in a manner that would best serve and promote those interests. (1997, 146)

Greenberg's actions reflect the very foundation of why the American Constitution serves as the theoretical and practical underpinning for the administrative state. It provides a grounding and a standard that cannot be rejected by those who follow its principles. We recognize and acknowledge many of the democratic defects associated with the Constitution (Levinson 2006), but we accept it nonetheless. For, as Publius concluded at the end of *Federalist 51,* "And happily for the *republican cause,* the practicable sphere may be carried out to a very great extent, by a judicious modification and mixture of the *federal principle*" (Cooke 1961, 353).

Rosenbloom's (1983) analysis of the legal approach to public administration also provides an important intellectual foundation for the constitutional school. His emphasis on procedural due process, individual substantive rights (as the Supreme Court has determined that the Fourteenth Amendment also incorporates the Bill of Rights), and how the American courts value equity and fairness when conflicts emerge between private parties and the government (1983, 223) is quite helpful. The constitutional school supports this type of argument because it demonstrates a way for the field to pay more active attention to how our government can and should secure the constitutional and individual rights of citizens. It places less emphasis on economic cost–benefit analyses and more attention on how government can work in responsible, representative, and responsive ways that uphold constitutional principles and the rule of law within the context of public sector decision making.

Contributors to the intellectual development of democratic theory, dating from the ancient Greeks to contemporary theorists such as Leo Strauss, Isaiah Berlin, and Sheldon Wolin, have consistently argued for the need to connect the study and practice of politics with higher values that are essential to the maintenance and preservation of democracy, including, but not limited to, fairness, justice, equality, freedom, individual rights, property, moral reasoning, and the use and misuse of discretionary judgment. Those interested in taking part in a movement toward a constitutional school could make scholarly contributions to the literature that underscore where, when, and how a branch of government, an administrative agency, or a civil servant upholds democratic principles, as in the case of the "Revolt at Justice," and where, when, and how they might neglect them, as in the case of Hurricane Katrina. When members of the public administration community discuss, write, and teach issues that relate to ideas of constitutional significance and rule of law, a constitutional school of thought provides an intellectual place and a framework for bringing these ideas to life in meaningful, lasting ways.

The constitutional school for American public administration does not preference one constitutional perspective or idea over another; rather, we encourage and depend on different approaches, perspectives, and thoughts about how the American Constitution affects administrative theory and practice. Important examples already exist in our scholarly literature that support the position that this school of thought would improve the intellectual and institutional discourse regarding the relevance of American constitutional tradition to issues affecting contemporary public administrative management.

First, Herbert Storing's (1981) position that the Anti-Federalists were leading contributors to the ratification process of the proposed Constitution of 1787 is a significant addition to the history of public administration. His scholarship has improved the field's awareness of how the Constitution's opponents worked to improve the ratification process, because they were able to instruct Publius on certain weaknesses in his argument.[6] Although Storing never uses the term "constitutional school," his scholarly work certainly makes him a contributor to the idea behind this intellectual movement because so much of his research focuses on the historical, political, institutional, and intellectual development of the American Constitution and the state it created. The field should take note that both John Rohr and David Rosenbloom were his students at the University of Chicago.

Second, O. C. McSwite's (1997) argument that the Federalists deceived the Anti-Federalists into ratifying a new governing document that did not represent their interests in the same way the Articles of Confederation protected individual and community rights is another highly contested point of view that is currently being debated in American administrative theory. Storing's and McSwite's perspectives could not be more different from one another in terms of their interpretation of the constitutional history of the United States. The fact that such dichotomous positions currently exist pertaining to the ratification process should continue to invoke meaningful, purposeful discussions and analyses by constitutional scholars and administrative historians as to the contemporary value that these positions bring to the intellectual practice of democratic governance and the study of public administration.

More recently, Sanford Levinson's (2006) questioning of where and how the American Constitution went wrong, and what the people can do to correct these deficiencies, provides another important argument that we would like to draw attention to in terms of demonstrating how this school could encourage the field to evaluate and debate the pervasiveness of the Constitution within our democratic republic. In this provocative and engaging work, Levinson maintains that the legislative process, Article II's creation of an all too-powerful executive, lifetime appointments for Supreme Court justices, various forms of voting discrimination, and the difficulties that Article V imposes for amending the Constitution are undemocratic governing elements that permeate the American Constitution. These types of questions, irrespective of how one interprets Levinson's argument, are precisely the sort of discussion that the constitutional school would like to initiate and promote in academic journals, at national conferences, and in graduate seminars. They demonstrate that perspectives on American constitutional theory are multidimensional and that we can all learn from engaging with ideas that might be the complete opposite of what we, as individual scholars, assert as fundamentally essential to the legal and constitutional foundations of the American state but are intellectually relevant all the same.

Another example is Supreme Court Justice Antonin Scalia's line of reasoning as to why the arguments made at the founding of

the American republic continue to serve as a formative tool for interpreting the Constitution textually. While Scalia's interpretation of the Constitution is quite different from that of Breyer and many others, his distinctive, textualist approach to constitutional interpretation and legal reasoning provides another informative perspective for the constitutional school of American public administration to discuss and learn from, to agree or disagree with, theoretically and practically. According to Scalia,

> I will consult the writings of some men who happened to be delegates to the Constitutional Convention—Hamilton's and Madison's writings in *The Federalist,* for example. I do so, however, not because they were Framers and therefore their intent is authoritative and must be the law; but rather because their writings, like those of other intelligent and informed people of the time, display how the text of the Constitution was practically understood. Thus I give equal weight to Jay's pieces in *The Federalist,* and to Jefferson's writings, even though neither of them was a Framer. What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text, not what the original draftsmen intended. (1997, 38)

While many within the legal community disagree with Scalia's form of constitutional interpretation, the purpose of the constitutional school is not to defend or attack his legal reasoning. The point, rather, is to recognize that scholars, practitioners, lawyers, judges, justices, and others all have their own interpretive preferences of the rule of law. The constitutional school hopes to embrace *all* interpretive perspectives as an inclusive means to encourage as many scholars and practitioners as possible to examine how the American Constitution permeates each area of public administration scholarship and practice. In a word, we could not agree more with the application of Thomas Jefferson's position when he established the University of Virginia: "[H]ere we are not afraid to follow truth wherever it may lead, nor tolerate any error so long as reason is left free to combat it."[7]

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In their discussion of how to connect American constitutional tradition with the types of decision making that good and faithful civil servants make on a regular basis, Gary Wamsley and his colleagues argue, "The public administrator takes an oath to uphold the Constitution of the United States—not the whims of the powerful. This oath initiates administrators into a community created by that Constitution and obliges them to know and support constitutional principles that affect their official spheres of public service" (1990, 47). Those who were originally part of the Blacksburg School and those who are products of this educational and philosophical perspective continue to emphasize the idea that if American civil servants do not work to defend, protect, and preserve the Constitution, the republican structure of the nation's constitutional order and its institutional composition will be severely jeopardized (Rohr 1986; Terry 2003; Wamsley et al. 1990). Such efforts have led Jeffrey Rosen (2006), a professor of law at George Washington University, to argue that the courts are the most democratic of the three branches of American government. He points to the vital role that the judiciary, especially the Supreme Court, plays in making decisions that affect race, the right to privacy, politics, and civil liberties. The theme he weaves together is particularly useful to the constitutional school, because it provides another avenue to debate how the federal courts influence the democratic principles embedded in our republic. It also gives additional legitimacy to Wamsley's assertion that the field should pay more attention to the "ever-democratizing" dimension of American public administration.

Additionally, Robert Zinke points to another perspective on the role of the American Constitution in public administration:

> The Constitution establishes a rhetorical republic, where primary governmental activities consist of speaking, listening, and acting expressively and where national unity depends upon the commitment of citizens to learn about moral realities and to participate actively in conversations, debates, and expressive actions that make those realities manifest. This republic embraces a diversity of political and socioeconomic interests but allows no single voice to dominate public discussion. (1992, 145)

The purpose of a constitutional school for American public administration is to encourage scholars and practitioners to continue to engage, debate, and write on issues that are significant to the constitutional heritage of the United States, its democratic institutions, and its administrative agencies, like the ones espoused by Rosen and Zinke. Those who are part of this movement hope that by discussing ideas that resonate with constitutional theory and the rule of law, the field will be encouraged to add more detailed examinations, like those already published by Rohr, Rosenbloom, O'Leary, Wise, Phillip Cooper, and Terry Cooper, among others, of how the law affects the administrative state. This, in turn, will provide for a more comprehensive understanding as to how the Constitution and the nation's legal system affects the maintenance and preservation of the American republic and its public organizations (Newbold 2008).

In his latest book, *Active Liberty,* Justice Stephen Breyer expresses his views on the type of government that the American Constitution established and seems to embrace Rosen and Zinke's perspectives:

> I see the document as creating a coherent framework for a certain kind of government. Described generally, that government is democratic; it avoids concentration of too much power in too few hands; it protects personal liberty; it insists that the law respect each individual equally; and it acts only upon the basis of law itself. (2005, 8)

Whereas Terry looked back in time to *The Federalist* to demonstrate the need to move toward a constitutional school, one could just as easily argue that Breyer's well-crafted analysis legitimates the need to establish this school of thought in strictly contemporary terms. Unlike France, for example, the American republic cannot exist without its Constitution, and if our state's institutional legitimacy is dependent on this governing document, so, too, are its administrative agencies (Rohr 1995). Even the authors of the acclaimed President's Committee on Administrative Management report were perceptive enough to recognize that "bad management may spoil good purposes, and that without good management democracy itself cannot achieve its highest goals" (Brownlow, Merriam, and Gulick 1937, 4). Preserving the constitutional integrity of the administrative state not only was a goal of the founders of the republic, but also has been associated with every major movement for administrative change throughout the history of the United States, even those that were primarily concerned with improving the economic dimensions of efficiency and effectiveness.

Legitimating and moving toward a constitutional school for American public administration will not only add to the intellectual history of the field, but also enhance our knowledge and understanding of how administrative scholars, civil servants, and state institutions work to conserve a particular type of democratic-republican order. As Moe and Gilmour correctly observe, public administration is "founded on the body of the Constitution and the Bill of Rights and articulated by a truly enormous body of statutory, regulatory, and case law to ensure continuance of a republican form of government and to protect the rights and freedoms of citizens at the hands of an all-powerful state" (1995, 135). Moving toward a constitutional school demonstrates the value of this scholarly perspective while also adding another important way to legitimate the intellectual and constitutional foundation of the American administrative state (Rohr 1986, 2002; Rosenbloom 2003).

Once the Constitutional Convention of 1787 concluded, a citizen approached Benjamin Franklin as he was exiting Independence Hall and asked, "Well, Doctor, what have we got?" Franklin responded succinctly, "A Republic, if you can keep it." Moving toward a constitutional school for American public administration is one critically important way our field works "to keep it."

Notes

1. This movement was established by Rick Green, Karen Hult, Doug Morgan, Stephanie Newbold, John Rohr, and David Rosenbloom at the Annual Meeting of the Southern Political Science Association, held in January 2007, New Orleans, Louisiana.
2. Waldo argued that the American founders championed principles associated with limited, divided, and balanced government, whereas early nineteenth-century administrative democrats wanted it pulverized, dispersed, and vulgarized (see chap. 8 of *The Administrative State,* especially 130–40).
3. Gary Wamsley, cofounder of the Center for Public Administration and Policy at Virginia Tech and editor of *Administration & Society,* makes this point in every course he teaches and every lecture he gives. He deduces this concept largely from Gibson Burrell and Gareth Morgan's *Sociological Paradigms and Organizational Analysis* (1979), in which those authors argue that the incommensurability of paradigms does not allow for the "incorporation of the less widely accepted approaches within the dominant functionalist paradigm."
4. This is a reference to the fact that federal judges are nominated by the president and confirmed by the Senate for a lifetime appointment.
5. See Justice Stephen Breyer's interview with CNN legal correspondent Jeffrey Toobin in the October 28, 2006 special *Broken Government: Judges on Trial.* For a less detailed analysis, see the chapter "A Serious Objection" in *Active Liberty* (2005).
6. Storing focused on the Anti-Federalists' concerns over the lack of a bill of rights in the proposed 1787 Constitution and the need for Publius to clarify his definition of representation and representative government in a federal separation of powers regime.
7. Thomas Jefferson to William Roscoe, from Monticello, 1820 (Lipscomb and Bergh 1904, 303).

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