

I

Democracy from Public Administration

How does representative government function when public administration has the authority to reshape democracy? Posed in this way, the question may seem contrived, even rather extreme. But the thought exercise, I contend, helps to link public administration to representative government in a way that scholars in the field have not been doing carefully, at least not since the Second World War. This is because the discretion that modern governments give to administrative actors captures not only the means for implementing policies but also democratic values and the authority to make trade-offs among them. Viewed in this way, public administration is not *policy* administered, but *democracy* administered. This book is about these value trade-offs and the challenges they present for representative democracy. It is about the tensions and the harmonies between democratic politics and democracy administered.

To grasp the problem initially, consider the application of Jason Kessler, organizer of the “Unite the Right” rally to public officials in Charlottesville, Virginia, in 2017. On the eve of the event, local officials revoked Kessler’s permit to march in a centrally located park but did not do the same for counter-protestors. The location at issue, Emancipation Park (formerly Lee Park), was central to the story, for it was the planned removal of a statue of Confederate General Robert E. Lee that stimulated Kessler’s application. Kessler and the American Civil Liberties Union filed suit against the city, and a federal court in Charlottesville held that revoking the permit was a content-based restriction on Kessler’s right to free speech. The court did not find the city’s argument about public safety convincing.

Although the defendants maintain that the decision to revoke Kessler's permit was motivated by the number of people likely to attend the demonstration, the record indicates that their concerns in this regard are purely speculative. ... [T]o the extent the defendants' decision was based on the number of counter-protestors expected to attend Kessler's demonstration, it is undisputed that merely moving Kessler's demonstration to another park *will not avoid a clash of ideologies or prevent confrontation* between the two groups. As both sides acknowledged ... critics of Kessler and his beliefs would likely follow him to McIntire Park if his rally is relocated there. [...] Moreover, given the timing of the City's decision and the relationship between Kessler's message and Emancipation Park, *supporters of Kessler are likely to still appear at the Park*, even if the location of Kessler's demonstration is moved elsewhere. Thus, a change in the location of the demonstration would not eliminate the need for members of the City's law enforcement, fire, and emergency medical services personnel to appear at Emancipation Park. Instead, it would necessitate having personnel present at two locations in the City. (*Kessler v. City of Charlottesville, Virginia*, No. 3:17CV00056, [W.D.Va. August 11, 2017, p. 4–5, emphasis added])

The argument in this book shifts the insinuations of these facts from a restriction of the content of speech to the influence on democratic values embodied in the choices made by the public administration. My claim is that officials positioned as they were in Charlottesville have been delegated enough authority to reshape democracy, and that the rights discussion, while essential to the legal decision in this case, obscures a more general problem of the structure of the administrative state and its role as democracy administered. In the *Kessler* decision, the court was explicit that the premise for anticipated involvement of emergency services was “a clash of ideologies,” a “confrontation” that would be provoked by “supporters of Kessler.” The focus of these particular public officials was on competing beliefs, and their choices had implications for what I will call process values in American representative government. The outcome of the “Unite the Right” rally was tragic, reaching its denouement with the death of counterprotester Heather Heyer, killed by a car driven by James Alex Fields, Jr., who was convicted of her murder in December 2018. Because of the complicated facts that emerged after the decision in *Kessler*, and because the nature of public administration as democracy administered is certainly not limited to the United States, perhaps another scenario can provide further illustration.

Consider now, a hypothetical example involving an important Italian official called a *questore*, who plays a coordinating role across police forces to ensure public safety. This official has been given notice that an extreme political group plans to protest in a central public square in his jurisdiction. Article 17 of the Italian Constitution provides that the

protest is allowable if it is peaceful and if its participants do not carry weapons, while the 1931 *Testo unico delle leggi di pubblica sicurezza* provides that the *questore* may establish a time and place or prohibit the gathering altogether if a substantiated reason leads the *questore* to conclude that the gathering would pose a significant likelihood of danger to conditions of public safety or security. Suppose that the *questore*, in possession of a substantiated basis for restricting the gathering, believes in a basic sense of pluralism as a democratic value that should govern her decisions in such cases, and chooses a time when opposing groups can easily mobilize to bring discordant voices into a discourse with one another. Suppose further that the *questore* ultimately privileges majoritarianism over pluralism, and, consequently, chooses to reject the central square of the town in favor of a site so poorly accessible that no one other than the protestors themselves would be likely to hear the arguments presented. In situations like these, trade-offs among important democratic values are in the hands of those who manage public agencies. My hypothetical *questore* has made those trade-offs, and they may very well be different from those inherent in the Italian constitution, which defines the nation's system of representative government.

In this book, it is not only important *that* officials have the discretion to exchange values in this way. *How* they make these choices, I will contend, should be more prevalent in public administration scholarship than it has been in recent decades. As a consequence, my argument has both positive implications for the study of public administration as well as normative implications for how it can be conceived as democracy administered. This dual purpose is unavoidable in our field of study, and I will argue that the implications of our scholarship for the representative democracies in which it is situated must be confronted directly. The subject of this book is not political theory or political science, per se. It is a book about public administration. Yet in order to understand how public administration can achieve its promise as democracy administered, I must draw deeply from literatures about the nature of politics and government and ultimately contribute to them. In particular, those literatures must guide me to a useful framework for understanding representative government.

THE VALUES OF REPRESENTATIVE GOVERNMENT

Democratic values – principles or standards about how representative government ought to operate to maintain rule by the people – will be situated at the heart of every paragraph in this book. What are those

values? Can they all be achieved at once? How does the structure of public administration influence which ones are privileged? What are the implications of value choices as the structures of governance become more complex? How does the structure of public administration shape the beliefs officials hold about democracy? How do those belief systems relate to values embedded in the representative governments that these officials serve? How do those who design and implement structures of public administration think about value trade-offs? How should they? I address these questions in the chapters that follow.

My focus on representative government places an essential scope condition on the argument in this book. My intent is not to compare democracy to autocracy. My argument does not facilitate comparisons among different economic systems, such as capitalism or socialism. Its comparative potential is among the representative democracies of the world. The implications of my arguments are intended to compare systems with more or less accountability, majoritarianism or pluralism in relation to others. This book also has no ambition to be a critique of representative democracy, of which there are many important examples. Instead, it is a reflection about public administration in the systems of government prevailing in most of the nations of the world. According to the Polity project, in 2017, 96 of 167 nations with populations of 500,000 or more had some form of representative government and were considered democracies (Desilver 2019). While the examples and empirical contexts in this book are drawn from a selection of countries – and a selection based on the availability of data and the appropriateness of illustration – the scope of the argument I advance is much broader.

When thinking about representative government, the authority for public administration to reshape democracy should not surprise us. In his *Notes on the State of Virginia*, Thomas Jefferson warned that “[a]n elective despotism was not the government we fought for,” preferring, instead, one “in which the powers of government should be so divided and balanced among several bodies of the *magistracy* as that no one could transcend their legal limits” (Jefferson 1975 [1801], 164, emphasis added). This reflected the enlightenment idea that the rule of law legitimized public administration, and a scheme of incentives worthy of the organizational theorist and manager Chester Barnard (1938) could help it to do that. By contrast, I will argue from the view that elections can allow citizens to articulate the basic aims toward which government should orient its policies and which are the relative priorities among them. The means of constructing policies that serve these aims are appropriately

in the hands of those with varying degrees of expertise, be it in the technology of policymaking or in the technologies that dominate policy domains from the environment to public health to national security.

Public administration has always played a pivotal role in translating aims and priorities into concrete programs that serve them. What is more, institutional arrangements protect value compromises in the widest variety of contexts. In *What Money Can't Buy*, the political theorist Michael Sandel (2012) argues that the incentives of markets are not value neutral: changing the incentives for providing a good or service changes the *meaning* of that good or service (see also Milanovic 2019; Satz 2010; Walzer 2008). In this book, I contend that institutions, and in particular, public administration, can reorient democratic values. Changing the rules and incentives for providing a public good or service changes its *democratic* meaning. This is the essence of what translates public administration into the output of democracy administered.

CHARACTERS

The questions that motivate this book can be addressed by understanding the interacting perspectives, roles, and preferences of four principal characters. Each character represents a large group of individuals, and each group exists across a range of national and substantive contexts. The reader should see each character in the same way that a game theorist sees a player, that is, as an abstract construct that shares just enough characteristics with an individual or organization of theoretical interest to make the analysis evocative of the interaction under study.

I will make consistent reference to these characters – representatives, policy workers, managers, and champions – throughout. My hope is that doing so will streamline my arguments for the reader. It should also provide a measure of clarity as the ideas in the book become more complex. Each character is described here, and all take up their parts immediately thereafter.

Representatives

The politicians in my argument are elected representatives of the people. They are directly chosen by voters in elections that are more or less competitive. Their primary role is the enactment of laws that set forth the goals of policymaking and they can serve at national or subnational levels of government. They are legislators, cabinet ministers, presidents,

mayors, and city councilors. Whether they serve in parliaments, are chosen to take ministerial responsibility for departments, or are directly elected to executive positions, it is the electoral connection with the people they represent that defines their character in the pages that follow.

Policy Workers

The individuals who perform the tasks required for implementing the laws representatives make are called policy workers in this book. They do work – policy work – that implements the goals established in laws by representatives, and they are subject to the rule of law, either in their formal roles within, or in their contractual commitments to government. Laws enacted by representatives both empower and restrain their behavior, and they shape policy workers’ interests and beliefs about their role in representative government.

The class of policy workers is very large. It includes a vast number of individuals whose effect on my argument and on public policy is not particularly significant. The manager of a building in which government offices are located is a policy worker. Her role may become crucial over time, or, rather, at a single crucial point in time, as when the policy workers in the building must continue to serve the public during a pandemic. Policy workers are government bureaucrats protected by civil service laws, and independent contractors whose relationship with the government does not exceed the four corners of an agreement to provide a good or service. They work for nonprofit and international organizations, both within and outside the boundaries of the countries in which they have citizenship.

What binds policy workers together as a construct is their efforts to implement the laws enacted by representatives and, whether small or large, their *discretionary authority* to do so. Discretion gives policy workers the rights to make choices about the means of achieving the aims of these laws, and the policies they encapsulate, and to act on those choices. The formal sources of those rights are in statutes, contracts and the like, and these rights are mediated by informal norms of administrative practice.

Managers

Many of the arguments in this and other books about public administration are oriented primarily toward one particular type of policy

worker. Managers are policy workers whose discretionary rights extend to trade-offs about resources and, crucially for my argument, among democratic values. The Charlottesville officials responsible for denying the demonstration permit to Jason Kessler and my hypothetical *questore* are managers. Laws often directly mention such individuals or their supervisors, identifying them with categories of decisions and granting them the discretion to make them. Managers can be appointed to their positions by representatives, serve in established civil service career structures that provide some insulation from political influence, or have the power to make resource and value trade-offs by virtue of contracts with other managers within government. For these reasons, managers can, formally speaking, work both within and outside of government. They serve at various levels in organizations and governments, exercising a wide variety of duties in their organizations. The common bond of this group of policy workers is their discretion legitimized by law and adherence to it, not an electoral connection. Their pivotal role in this book concerns the implications for representative government of the ways that they use their discretion.

Champions

The final character in this book advocates proposals for a particular way of performing policy work. In this sense, they are champions of a cause, which may be great or small. In *Reinventing Government*, David Osborne and Ted Gaebler (1992) were champions for contracting and private sector provision of many public services, and Gaebler was also a champion for these ideas while serving as the city manager, an appointed post, of Rancho Cordova, California. Champions can be representatives, managers, other policy workers, and interested stakeholders. Scholars are often champions, and such is my role in this book because I argue that public administration ought to be democracy administered. The defining feature champions share is their advocacy of a proposal about the way that policy work is done. This makes them different from what the political scientist John Kingdon called policy entrepreneurs, whose “defining characteristic” requires self-interest, namely, a “willingness to invest their resources – time, energy, reputation, and sometimes money – in the hope of a future return” from policy work (Kingdon 1995 [1984], 122). The champion may, but need not be, driven by a discernable self-interest in future benefit.

THE ARGUMENT IN BRIEF

In the traditional narrative of public administration, democratic values are confined to the relationship between representatives and managers through a variety of *governance structures*, that is to say, the configurations of rules that govern public administration. In this way, governance structures enable and constrain managers whose decisions guide the process of policy implementation and affect its outcomes (e.g., Lynn, Heinrich, and Hill 2001). This relationship has been theorized in various ways with a focus on grants of powers by representatives, who hold them legitimately, to managers in government bureaucracies, who in turn exercise some of those powers through legal delegations. Laws are an imperfect tool and managers' discretion is an inevitable consequence of this imperfection, but discretion is also a tool for representatives to make "good" policy. Discretion allows for expertise to be deployed and can even incentivize policy workers to develop a greater capacity for meeting the aims of the public.

The traditional narrative balances the accountability of managers to representatives, a problem of *control*, with the need for policy workers to do policy work effectively, a problem of *capability*. Champions of governance structures provide various ways to balance the control and capability problems. When those mechanisms are put in place, they shape policy work.

My inquiry in this book concerns an additional problem beyond those of control and capability. When the *questore* has the discretion to privilege pluralism over majoritarianism in my hypothetical case, the problem is neither one of control nor capability, but, rather, it concerns her beliefs about her place in the Italian system of representative government. Latent in the traditional narrative of public administration is the problem of how governance structures influence managers' *democratic belief systems*, or, arrangements of democratic values and attitudes. When champions design governance structures, they constrain democratic belief systems in that a change in one value or attitude would require a corresponding change in another (Converse 2006 [1964]). That is, governance structures compel trade-offs among democratic values.

Does the *questore* privilege pluralism because the mixed proportional representation of the Italian electoral formula is less majoritarian than its first-past-the-post counterpart in the United Kingdom? Or does the governance structure that enables and constrains her policy work shift her democratic belief system to a more pluralistic one? And if a similarly

situated public safety official in the United Kingdom makes the same trade-off, has the governance structure created tension with the country's idea of representative government? Ought a governance structure to do this? These positive and normative questions of *value reinforcement* are implicit in the traditional narrative, but left largely unexplored. In this book, I offer a framework for understanding and legitimating the actions of the policy workers that feature in each question. Value reinforcement is an essential ingredient of the informal means through which policy work finds harmony with representative government.

Control, capability, and value reinforcement must jointly render public administration into democracy administered. This means that champions play a starring role. For this essential reason, champions must both consider and make plain the impact of governance structures on the democratic belief systems of policy workers, and most of all, on managers, who have the discretion to reshape representative government.

My argument considers trade-offs among two types of values in representative government. While contemporary political theory considers a distinction between substantive and procedural values, I think that the more appropriate distinction for public administration considers the object to which the value relates. Actor-relative values apply to representatives and policy workers. Process-relative values concern the procedures by which democratic influence over policy work can be achieved, such as those governing decision-making. To be sure, traditionally procedural values can be found in either category. What is more, the values at the heart of my argument are not a comprehensive list of those relevant to policy work (see, e.g., Lever and Poama 2018). I contend that designing governance structures requires trade-offs among values that regulate policy workers and the procedures of policy work that influence the ability for public administration to approach the goal of democracy administered.

Accountability values are actor-relative and relate to the identifiability, evaluability, and probability of sanctioning representatives, managers, and policy workers. *Process* values are process-relative because they live in the contrivances through which citizens shape the policy work that is done for them. When the policy aims of citizens are collectively revealed, as when we vote in elections, the interests of majorities or pluralistic expressions of competing interests can shape policy work. Which of these happens depends on the values built into representative governments *and* into governance structures. Moreover, the extent to which citizens can collectively address all, rather than just some, of the problems facing the

polity is crucial to understand. No governance structure can embody all of these process values at one time. Champions face a dilemma because no structure is neutral to democratic values; each one enhances some values while compromising others.

Confronting this *champion's dilemma* is necessary, but it elides the central puzzle in the traditional narrative. This normative problem is not solved completely when representatives do a good job of structuring delegation in the laws they enact. The *fundamental problem of public administration* is faced by policy workers, and most acutely by managers. How can policy workers use their discretion to fulfill the aims of the public as expressed through the institutions of representative government, and how can they do this through policy work that is effective given their capabilities? The extent to which managers embrace this problem depends on their democratic belief systems, which are shaped, to an important extent, by governance structures. This fundamental problem is one of managerial *responsibility*, and I contend that it transcends the problems of control and capability in the traditional narrative of the field (see Bertelli and Lynn 2003).

Accountability and process values are shaped and reshaped by governance structures, and I offer a framework for categorizing the trade-offs required by the champion's dilemma. *Accountability-enhancing* structures enrich the connection between managers' behavior and representatives' policy goals. *Process-enhancing structures* create a means of addressing process values that revises or extends their expression in representative government. *Accountability-obviating* structures rely on deliberation by groups of citizens, not elections, to realize the policy aims of citizens, or to detach policy work – more or less – from representative government. *Process-obviating* structures replace institutional means for respecting process values with managerial decision-making. Strengthening or weakening these values are the trade-offs intrinsic to the champion's dilemma.

These choices about values result in four basic types of governance structures, each of which shapes democracy in a particular way. *Controlled agency* enhances accountability by connecting policy work to the representatives to the people, retaining the same trade-offs among process values as the system of representative government in which the structure is positioned. *Managed agency* eases the process values of representative government, but maintains accountability to representatives for outputs or outcomes, not for the procedures of policy work. *Representative agency* obviates a direct accountability of policy workers