

## The Concept of Regime Values

### Are Revitalization and Regime Change Possible?

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#### Abstract

The rise, since the 1980s, of the so-called constitutionalist approach in the study of public administration is in large part the accomplishment of John Rohr. In this paper, an attempt is made to assess the usefulness of one of Rohr's earliest concepts, viz. the concept of regime values. In particular, its applicability to regimes other than the United States is examined. After brief overviews of the constitutionalist approach in general and Rohr's use of the concept of regime values in particular, it is argued that Rohr's conceptualizations of both 'regime' and 'values' are problematic and lead to an inherent ambiguity within the concept of 'regime values' itself. Specifically, it remains unclear what the obligation to 'uphold the Constitution' means, both by itself and in relation to other obligations. The applicability of the concept of 'regime values' is affected by the typically American reference points Rohr uses, and can only be improved, it is suggested, by treating 'regime values' more frankly as an inherently normative concept.

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<sup>1</sup> An earlier version of this paper was presented at the Research Workshop 'Public Values and Public Interest' in Copenhagen, May 28-31, 2008.

## 1. Introduction

What has been true for Kant in philosophy and Rawls in political theory, for instance, also applies to John Rohr in public administration: great contributions to a discipline are typically not made by job-hopping academics doing consultancy work, but by ivory tower scholars working for decades in the same place with a fine brush on learned monographs. In Blacksburg, Virginia, Rohr has been doing precisely that and the rise of the so-called constitutionalist approach in (American) public administration is in large part his personal accomplishment. In this paper, a necessarily limited attempt is made to investigate only one concept from Rohr's work, namely the concept of 'regime values'. Subjecting this concept to closer scrutiny seems particularly fitting in the light of the current interest in the more encompassing category of 'public values' (e.g. Bozeman 2007).

Interestingly, Rohr's concept of regime values has not remained uncontested. Peter Lawler, a political theorist who has also contributed to the constitutionalist approach to public administration and who is generally sympathetic to Rohr's work, reproaches Rohr for having "introduced the unnecessarily vulgar and misleading phrase 'regime values' into the discourse of American public administration" (1988: 55, note 16). He adds he is glad Rohr has left the phrase out of later publications and wishes his example will be followed. Lawler seems to overlook, however, that the absence of a phrase need not mean that the concept to which that phrase refers is also abandoned. Rohr himself, in any case, still adheres to the concept<sup>2</sup> and it is relevant to see what he means by it. Alternatively, if there are indeed good reasons to abandon both the phrase and the concept, attempting to articulate those reasons seems a worthwhile enterprise. So in this paper I examine the meaning and usefulness of the concept of regime values as a normative foundation for public administration, and, more particularly, I assess its applicability to regimes other than the United States. Are regime values a useful source of legitimacy and moral guidance for public administration? And is regime change for the concept of regime values possible?

To answer these two questions, I will first briefly discuss the constitutional approach to public administration in general (section 2). Then, in section 3, Rohr's concept of regime values is expounded. Section 4 offers a critical conceptual analysis of the concepts of regime, values, and regime values. Next, the question is addressed

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<sup>2</sup> As he confirmed in a personal communication with the author.

whether Rohr's concept of regime values is indeed applicable outside the United States (5). I conclude with a suggestion intended to make Rohr's concept of regime values more meaningful and more widely applicable (6).

## 2. The constitutionalist approach

Few students of public administration seem aware that Woodrow Wilson in his famous 1887 essay 'The Study of Administration' argued claimed not only that "administrative questions" are separate from "political questions" (his now-notorious politics-administration dichotomy), but also that they are separate from constitutional questions (pp. 209-211). Whereas the first dichotomy was generally abandoned during the 1930s and 1940s, the second dichotomy has remained uncritically accepted for nearly one century. Until recently, constitutional issues have been grossly neglected in the study of administration.

An exception to this rule is the work of Norton Long. In an essay pointedly titled 'Bureaucracy and Constitutionalism' he has stated that "[a]n assessment of the vital role of bureaucracy in the working American constitution seems to be overdue" (1952: 810). And: "It is high time that the administrative branch is recognized as an actual and potentially great addition to the forces of constitutionalism" (1952: 818; cf. 1954: 30). In another essay he said: "Attempts to solve administrative problems in isolation from the structure of power and purpose in the polity are bound to prove illusory" (1962: 62-63). These calls for treating public administration from a constitutional viewpoint are clear enough, but they received no immediate resonance in the field.

Only in the 1980s a full-fledged constitutionalist approach to public administration emerged with the work of Rohr. Rohr was of course not entirely original. While doing his PhD in Chicago in the late 1960s, he was tutored by Herbert Storing and several of Rohr's most important insights can be found in Storing's writings already.<sup>3</sup> Both Storing and Rohr were students of the well-known political philosopher Leo Strauss, who also taught in Chicago. Though not necessarily

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<sup>3</sup> Storing primarily wrote about the American Founding (he published the Anti-Federalist writings) and about aspects of the American constitutional and social order, such as the presidency and slavery (1995d), but he also wrote several essays on public administration, including a long and very critical review of Simon's administrative thought (1962) and a much more sympathetic review of the work of Leonard D. White (1965).

Straussian in the strict sense of the word, many writings of constitutionalist thinkers on public administration, not in the least those of Storing and Rohr themselves, show traces of Strauss' characteristic predilection for classical political philosophy (cf. Pangle 2006: esp. 115-117). Another major influence on Rohr's thought came from Leonard D. White, who as public administration's first textbook writer and historiographer showed that early American administrative thought and practice "were intrinsically connected with and subordinate to Federalist political and constitutional theory," as Storing put it (1965: 51).

Partly because of his early death and partly because the emphasis of his work was in the history of American political thought, Storing has remained relatively unknown among students of public administration. Rohr, by contrast, has devoted a long and prolific career to that topic and he has had considerable success in converting others to his approach. To speak of a Constitutionalist School, as some do, seems a bit exaggerated, but certainly the approach has attracted some notable contributors, including (besides Rohr and Lawler) Richard Green, David Hart, Kent Kirwan, Donald Maletz, Douglas Morgan, David Rosenbloom, and others. The constitutionalist literature on public administration has been growing steadily.<sup>4</sup>

The main theme of these constitutionalist theorists has been the legitimacy of public administration within the American political order. In this connection, they have resuscitated normative concepts like 'public interest' and 'responsibility' (Storing 1995b) and argued that the American administrative state is compatible with the constitutional republic envisaged by the Founders (Rohr 1986). Indeed, within that republican scheme they have elevated public administration to the central position of constitutional "guardian" or "balance wheel" (Morgan 1988), playing a role comparable to that of the original Senate (Rohr 1986: 39; Storing 1995a: 419; 1995c: 302). To civil servants they have accordingly ascribed a duty of 'statesmanship' (Lawler, Schaefer, and Schaefer 1998; Storing 1995a; Rohr 1986: 185).

It is not always easy to understand how this lofty idea of public administration can be matched with these authors' Tocquevillean orientations (Lawler 1998) and their concomitant aversions to "big government" (Storing 1995c). Of course, an elevated view of public administration does not logically exclude a wish to keep it

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<sup>4</sup> See Rohr 1995: xiii, including note 6, for a helpful, even though now somewhat dated overview.

small, but both politically and theoretically the combination is certainly odd.<sup>5</sup> At least in part, this position should be understood as a reaction to neo-liberal bureaucrat bashing in the 1980s and new managerialism in the 1990s. Many constitutional theorists were triggered by President Reagan's declaration, in his first inaugural speech, that "government is the problem" and they have vigorously opposed New Public Management and Vice-President Al Gore's Reinventing Government initiative.

Academically, the constitutionalist approach has found itself at odds with the modernist mainstream as well as with various postmodernist sidestreams of contemporary public administration theory.<sup>6</sup> Examining these interesting confrontations falls outside the scope of this paper, but even if one basically accepts and appreciates the main tenets of the constitutionalist approach, as I do, one can be critical of certain elements as they have been developed in the (American) literature.

In particular, the constitutionalist approach often seems to be overshooting its mark. Calling all civil servants potential 'statesmen' or, more fashionably, 'leaders' threatens to erode the meaning of statesmanship and leadership as ideals.<sup>7</sup> Likewise, catch phrases like 'constitutional balance wheel,' though understandable from the political climate in which they originated, are better shunned as potentially perilous overstatements. They do not only reflect the inclination, so widespread among students of public administration, to side too closely with their object of study, but more importantly, they go against the grain of the constitutionalist approach itself. For

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<sup>5</sup> It reminds one of Dwight Waldo's remarks in an interview:

"For my part, I am fond of a quotation from the noted economist, Alfred Marshall, certainly no enemy of private enterprise: 'Government is the most precious of human possessions; and no care can be too great to be spent in enabling it to do its work in the best way: a chief condition of which is that it should not be set to work for which it is not specifically qualified, under conditions of time and place.' This is both a powerful statement of the positive role of government and a highly pertinent reminder of an essential qualification. As a statement of principle, it is –I judge– beyond cavil." (in Brown & Stillman 1985: 460).

Against the tide of the times, the constitutional theorists of public administration in America have so far emphasized the 'positive role' more than the 'essential qualification'.

<sup>6</sup> In contrast to the modernist mainstream, the constitutionalist approach is frankly normative (cf. Vile 1998: chapter 11 and p. 386 for the opposition between constitutionalism and behavioralism). In contrast to several strands of postmodernism, constitutionalists willingly accept the institutions of the representative democratic *Rechtsstaat* as the perhaps not absolutely best, but practically best regime conceivable (*pace* Fox and Miller 1996: 25-31).

<sup>7</sup> Green says administrators are "both clerk and statesman" (1998: 91; cf. p.109). Perhaps it would be even better to say that they are neither of these, but something in between. In any case, "true statesmen are rare" and "*administrative* statesmanship is a drastically limited version of the original concept" (1998: 107). Drawing a useful distinction between "being a statesman" and "performing acts of statesmanship," he writes: "We needn't require officials to *be* statesmen. The qualities of statesmen are too rare and their powers too awesome. However, we do want officials to perform occasional acts of statesmanship..." (1998: 108; see also the illuminating essay by Werner Dannhauser, another pupil of Strauss, on this topic (1980)).

if public administration is granted a legitimate place within the constitutional order, it should at least be subject to the checks and balances and other mechanisms of constitutionalism characterizing and sustaining that very order. The idea of public administrators using their discretion to choose freely among their constitutional masters seems alien to this order. The public administration, though autonomous in some respects, should in general be kept subordinate to the traditional three branches. Rohr does recognize this aspect: “The Public Administration neither comprises nor heads any branch of government but is subordinate to all three of them. Like Congress, president, and courts, the Public Administration makes its distinctive contribution in a manner consistent with its peculiar place, which is one of subordination” (1990: 80). But he almost turns this idea on its head when he adds that this “subordinate capacity” gives public administrators the possibility of “choosing [their] constitutional masters” and hence “the opportunity to shape events” (1990: 81; cf. 1986: 181-185). This reversal, which reminds to Hegel’s master/slave dialectic, seems highly incongruent with the intentions of the Founders. In a constitutional government, discretionary administrative decisions can never be as definite as legislative, executive, or judicial decisions; they can always be overruled. Particularly from a constitutionalist viewpoint, the legitimacy of public administration has to be complemented with notions like legality, the primacy of politics, and accountability.<sup>8</sup>

I have dwelled for a moment upon these characteristics and internal problems of the constitutionalist approach, because many of them also pertain to the notion of regime values. But first we must see what Rohr means by that notion.

### 3. Rohr’s concept of regime values

Rohr for the first time presented his concept of regime values in a 1976 article and then gave it a prominent place in his book *Ethics for Bureaucrats* (1978, second edition 1989a). His basic argument is that an orientation on regime values can help bureaucrats to choose their path when the law gives them no guidance and they have to make use of their own discretion. In Rohr’s view, administrative discretion is the

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<sup>8</sup> An important subject of debate in this connection is the nature, scope, and strength of the executive power. Whereas some call for a ‘unitary executive’ in which the public administration stays under the President’s responsibility (e.g. Lawson 1994: 1241-1246), others, like Rohr, interpret Article II less strictly and allow for the exercise of executive powers by branches and bodies not hierarchically subordinated to the President (cf. Rohr 1989b).

most appropriate starting point for the study of administrative ethics.<sup>9</sup> To do him justice, it must be underlined at the outset that his intention in both publications is primarily pedagogical. He presents his “method” of regime values in the context of a discussion about the best way to teach administrative ethics, as a “practical teaching device” for “busy bureaucrats” (1989a: 77) or, in the earlier version, “career-oriented students” (1976: 402). This context explains many peculiarities of Rohr’s concept of regime values, such as their relatively general character: it is impossible and undesirable, he argues, to discuss all the varied ethical problems of different government agencies in the classroom (1989a: 71-72). But this original use of regime values as a concept for teaching administrative ethics does not of course preclude analyzing it outside the classroom. In academia perhaps even more than elsewhere, the concepts we teach should have a sound basis and a clear meaning.

Interestingly, Rohr himself has returned to the concept in 1998, when he wrote an entry about ‘regime values’ in the *International Encyclopedia of Public Policy and Administration*. The brief entry opens as follows:

“REGIME VALUES. An expression used frequently in public administration literature to denote the fundamental principles of a polity which, ordinarily, should guide administrative behavior. Although the term applies in principle to any polity, de facto it appears almost exclusively in literature focused on the United States. The expression entered the public administration literature in the first edition of this author’s *Ethics for Bureaucrats: An Essay on Law and Values*” (1998: 1929).

Sometimes Rohr speaks of regimes values as “the values of the people” (1976: 399), “the values of the American people” or simply “American values” (1989a: 74), especially when he wants to emphasize the democratic responsibilities of civil servants. More important than these, however, are the republican commitments of civil servants, symbolized by their oath of office: “The oath to uphold the Constitution is the moral foundation of ethics for bureaucrats” (1989a: 70). This oath is indeed

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<sup>9</sup> Like many others in the field of public administration, Rohr regards the ‘discovery’ of administrative discretion as the deathblow to the politics-administration dichotomy. In my dissertation (in preparation), I will argue however that both the concept and phenomenon of administrative discretion do not only not deny, but indeed presuppose the politics-administration dichotomy. For *the* classic study on discretion, see Davis 1969; a more recent extensive treatment is Galligan 1990.

required for ‘officers’ (so not for employees) by the Constitution itself<sup>10</sup> and implies, for Rohr, a direct obligation to promote the values of the regime (1989a: 68).

Now what exactly are these American regime values? In *Ethics for Bureaucrats*, Rohr elaborates on three of them: freedom, equality, and property. Of course he realizes that the Declaration of Independence mentions a slightly different set (life, liberty, and the pursuit of happiness), but unfortunately he does not explain why he opted for his own triad instead. He only says that “freedom, equality, and property are prominent examples of regime values, but they do not exhaust the concept” (1989a: 285). This leaves the reader wondering what other values may be included. Rohr himself, at any rate, has refused to treat the value of ‘social equity’ as an American regime value.<sup>11</sup> Even more emphatically, he has excluded ‘fraternity’ (mentioned by Thayer in a book review) from his catalogue (1981: 98).

How should students of administrative ethics go about studying regime values? According to Rohr, “these values can be discovered in the public law of the regime” (1989a: 68). In his view, the most suitable source to study regime values, at least in America, is Supreme Court opinions. After all, the Supreme Court is the principal interpreter of the Constitution and its opinions, Rohr argues, have four characteristics that make them particularly instructive for students of public administration. First of all, they are institutional in the sense that they have a certain grounding in the past which gives them stability. Second, they are dialectic, consisting of concurring and dissenting opinions that can both sharpen the administrative mind. Third, they are concrete and “disciplined by reality” and thus especially useful for administrative practice. Finally, they are pertinent, i.e. “useful for reflection on fundamental values” rather than trivialities (1989a: 77-84).<sup>12</sup>

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<sup>10</sup> Article VI, 3: “The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or affirmation, to support this Constitution...”

<sup>11</sup> Rohr says he rejects social equity because it is based “to a considerable extent on normative political philosophy and humanistic psychology” (1989a: 65) and because it is “too controversial to serve as a broad-based ethical standard for the entire field of public administration” (1998: 1929). Neither argument is really convincing. His own view is no less based on a normative political philosophy and (therefore) also controversial. Whereas Rohr does not give substantial arguments here, other constitutionalist theorists have offered profound criticisms of New Public Administration and Rawlsianism in the study of public administration (e.g. Lawler 1988; Lawler, Schaefer, and Schaefer 1998: preface).

<sup>12</sup> In the literature, doubts have been raised about Rohr’s claim that Supreme Court opinions are indeed the most appropriate entrance for the study of regime values. Denhardt, for instance, notes it is unclear to what extent Supreme Court opinions do indeed reflect the ‘values of the people’ or even the general views of a majority of citizens, or whether they should do so. Further, because the opinions Court may vary, shift, and conflict, they do not necessarily give firm guidance to administrator. Finally, he says,

Notwithstanding the massive importance of the Supreme Court interpretations, the oath of office, and the Constitution itself, Rohr contends that the usefulness of his concept of regime values is not limited to the United States. Indeed, he says he deliberately speaks about ‘regime values’ rather than ‘constitutional values’ to make this clear:

“By ‘regime values,’ I intend to suggest that the normative foundation of ethical standards for public servants in *any* regime is the values of that regime. In the United States these regime values happen to be constitutional values, but not every regime takes its constitution as seriously as Americans do. (...) By using the word ‘regime,’ my intention was to stress the particularistic character of the values that form the basis of public administration ethics. By emphasizing regime rather than constitution, I hope to make this book more interesting to students from other countries who are studying public administration in the United States” (Rohr 1989a: ix-x).<sup>13</sup>

In a passage that argues for the international applicability of his concept of regime values, the word ‘particularistic’ is strangely ill-chosen. Apparently, Rohr wants to say two things: on the one hand, all regimes have regime values, so the concept of regime values is general; on the other hand, each regime has its own regime values, so regime values themselves are particular(istic).

#### 4. Regime, values, and regime values

As said, Rohr’s work has been criticized from without and within the ‘Constitutionalist School’. Fox and Miller, two notable postmodernist scholars of public administration, have mainly criticized Rohr’s approach from without, but interestingly, they have also offered an internal criticism of the notion of regime values. They assert that Rohr’s regime values are “vanishing referents” (“Like mirages and rainbows, they disappear when approached”) because they are defined tautologically:

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the Court depends on precedents, whereas administrators must often chart new territory (Denhardt 2007: 121). In response, Rohr has pointed out, though, that the Supreme Court is not as tightly bound by precedent as other U.S. courts, but pre-eminently destined to correct traditions of judicial interpretation if necessary (personal communication with the author).

<sup>13</sup> “He outlines a universal concept (regime values), then studies it in the American context. In mentioning French regime values, and acknowledging others, he implies that *any* regime has values of interest to its administrators...” (Thayer 1981: 99). In fact, we see that Rohr not only implies it, he explicitly says it.

“They take the form: What is X? It is Y. What is Y? It is Z. What is Z? It is X. (For example, what are constitutional values? They are regime values. What are regime values? They are the polity. What is the polity? That political entity that was brought into being by the ratification of the Constitution.) Like the classic caricature of a bureaucratic runaround, we are endlessly transferred to the next office without satisfaction” (Fox and Miller 1996: 44).

Although eloquently formulated and even funny to read, this critique is quite misplaced. For one thing, Fox and Miller’s reconstruction of Rohr’s conceptual framework is not very accurate. He nowhere defined constitutional values as regime values, let alone regime values as ‘the polity’. Rohr is much more careful in his writings.<sup>14</sup> Moreover, the fact that concepts in a coherent framework refer to each other is not necessarily problematic, as long as these concepts (or some of them) also have theoretical or practical referents outside that framework. In Rohr’s work, this certainly is the case. The historical event of the ratification of the Constitution (mentioned by Fox and Miller) is a good example.

The inappropriateness of this particular critique does not mean that Rohr’s concept of regime values is entirely unproblematic. To assess how meaningful and useful it is, we must first examine the meaning of ‘regime’ and ‘values’ as the building blocks of the compound concept of ‘regime values’. To the objection that it is unfair to dissect a compound concept in this way, it can be replied that Rohr himself explains what he means by ‘regime’ and ‘values’ separately (1989a: 68, 74). So for him, apparently, understanding these two concepts is at least helpful to understand his compound concept.

Rohr elaborates on the meaning of regime as follows: “The word ‘regime’ is not used in the journalistic sense of the ‘Carter regime,’ or the ‘Reagan regime,’ and so on. Rather it is simply intended as the best English equivalent of what Aristotle meant by a ‘polity.’ More specifically by the American ‘regime,’ I mean the

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<sup>14</sup> Thayer gives another inaccurate characterization of Rohr’s position when he argues that Rohr’s “regime values (freedom, etc.) seem those of individuals. This places Rohr in the mainstream of ‘individualism,’ and I doubt he would argue for a more organic approach” (1981: 99). This is a misunderstanding. For Rohr, the regime is clearly the bearer of these values. And even when he would say regime values can only be *enjoyed* by human persons that would not of course make him an individualist.

fundamental political order established by the Constitution of 1789” (1989a: 3; also p. 68).<sup>15</sup> In a long but fascinating footnote, he adds:

“For those who distinguish state and society, ‘regime,’ as used in this essay, is closer to society than state. Although the distinction of state and society is a philosophical question of the first order, I do not think it makes any difference for the purpose of this book just where one stands on this great issue. Those who, like Aristotle, do not distinguish state and society may perhaps feel more comfortable with the words ‘regime’ or ‘polity’ than those who make this distinction. The latter may prefer the somewhat ambiguous term ‘society values’. It is important to note, however, that I am not talking exclusively about the values of the ‘state’ –the authoritative and coercive agent of a political society” (Rohr 1989a: 90-91, note 33).

With this interpretation of Aristotle’s concept of *politeia*, Rohr is certainly not idiosyncratic. Leo Strauss had already explained that for the ancients, “*politeia* is not a legal phenomenon”: “*Politeia* means the way of life of a society rather than its constitution,” although the former is shaped by the latter (1953: 136). Therefore, Strauss says, “[w]e shall translate *politeia* by ‘regime,’ taking regime in the broad sense in which we sometimes take it when speaking, e.g., of the Ancien Régime of France” (1953: 136-137). This is precisely the understanding of ‘regime’ Rohr also adopts. For him, ‘regime’ is a broadly cultural rather than a narrowly legal concept.

The Aristotelian concept of ‘regime’ used by Rohr is not easily accessible to modern audiences. And among the moderns, it may prove to be more difficult to comprehend for Europeans than for Americans. As is generally known, the Americans have a weak sense of state (Dyson 1980; Rutgers 2001; Stillman 1990, 1997). Therefore, the state/society dichotomy easily collapses in their mind. Europeans, by contrast, are traditionally schooled in forms of political and administrative thought in which the concept of state figures much more prominently. For all their organicism, they tend to see the state as fundamentally different from, and somehow elevated above, society. Accordingly, they would be tempted to see the American Constitution, its Supreme Court interpretations, and the oath of office as epitomes of the American

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<sup>15</sup> Likewise, in his *Encyclopedia* entry, Rohr points out that “these values were called ‘regime values’ – regime being considered the most suitable translation of Aristotle’s *politeia*. Those who used the expression ‘regime values’ were advised to make clear the Aristotelian origin of the term in order to avoid confusion with the journalistic use of the word, as in ‘the Clinton regime,’ ‘the Bush regime,’ and so forth” (1998: 1929-1930).

‘state’ rather than of American society. Thus the difference between American ‘statelessness’ and European ‘stateness’ could turn out to create difficulties for the successful exportation of Rohr’s concept across the Atlantic.<sup>16</sup>

Other problems are connected with the second conceptual element of ‘regime values’: the concept of values. Rohr defines ‘values’ as follows: “By ‘values’ I mean beliefs, passions, and principles that have been held for several generations by the overwhelming majority of the American people” (1989a: 74). In the 1976 article, he gives another (though congruent) definition: “A ‘value’ in the life of a person as well as a nation suggests a pattern of attitudes or behavior that recurs with some frequency. An attitude or a passion or a principle must have a history –either personal or societal before it becomes a ‘value’” (1976: 402). As Rohr himself admits, these definitions of values “a bit thin” (1989a: 92, note 44). They are certainly at odds with the Aristotelian, Thomist, and Straussian threads seamed so liberally through his writings, because they seem to make values contingent upon a particular historical situation.

To understand Lawler’s aversion to Rohr’s notion of regime values it may help to know that the very concept of ‘values’ is not very popular in Straussian (or more broadly, classicist) circles. Strauss himself gave a fundamental critique of Weber’s treatment of values, particularly his fact-value separation and his value pluralism (1953: 35-80), and Allan Bloom, perhaps the most illustrious of Strauss’ pupils and another Chicago professor, in his best-selling *Closing of the American Mind* directly associated the concept of values to Nietzschean nihilism (1987: 194-216). Perhaps these attacks were unnecessarily vehement and certainly the concept of values itself does not imply moral pluralism, let alone moral relativism or nihilism. At any rate, Rohr does not seem to share these Straussian concerns. Still, there is something paradoxical about his notion of regime values, with its explicit conjuncture of the ancient concept of ‘regime’ (*politeia*) and the modern concept of ‘values’. The

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<sup>16</sup> Of course, the difference must not be exaggerated. America’s popular form of government was intended, importantly, as a republic rather than a democracy. And while the American people have ratified the Constitution, in swearing to uphold (or as Article VI, 3 literally says, ‘support’) the Constitution public officials do not submit to the variable will of today’s populace, but to the particular expression of the popular will as it is laid down in the Constitution. Ultimately, therefore, they may be called to uphold the people’s Constitution –and the regime values it represents and sustains– against the people itself (except, of course, in an orderly process of constitutional amendment). This is an important nuance, but it does not take away the entire problem.

*querelle des anciens et modernes*, which was so fiercely poked up by Strauss, is smoldering in the heart of Rohr's concept.

A final problem is that regime values are certainly not the only or even the highest kind of values bureaucrats have to promote. As Waldo has shown, bureaucrats find themselves in a myriad of multiple and often conflicting obligations. Apart from the regime or Constitution, he lists the law, the nation or the country, democracy, organizational-bureaucratic norms, their profession and professionalism, family and friends, self, middle-range collectivities, the public interest or general welfare, humanity or the world, and finally religion or God (1980: 103-106). Hence some authors have criticized Rohr for not casting his net widely enough: "Limiting research on values in public administration to those associated with a regime ignores the accumulated spiritual wisdom developed over centuries of human experience" (Lynch, Omdal, and Cruise 1997: 475; cf. Jennings 1991).<sup>17</sup>

This critique seems a bit gratuitous. Few authors in public administration have drawn on a wider range of moral sources than Rohr. Moreover, he is well aware of the myriad of obligations public officials face (1989a: 84) and realizes that these obligations do all not have equal status or pertinence for civil servants. Specifically, he says that regime values "are not the highest values to which a regime might aspire" (1989a: 76). Rohr is no Machiavelli asking us to love our city more than our souls. He rightly emphasizes, however, that with their oath of office American civil servants accept a special obligation to their Constitution.

This does not solve all questions about conflicting obligations. A special obligation is not an overriding one (as Rohr sometimes seems to suggest: "For public administrators, the Constitution is the cause above causes"; 1990: 82). Further, one may ask what the obligation 'to uphold the Constitution' itself means. Is 'upholding' the Constitution is the same as 'running' the Constitution? Rohr clearly intends it to be something more: he requires civil servants to be conscious and serious about their constitutional responsibilities. The question is, however, whether the Constitution (or the constitutional tradition) itself requires this. Did not Madison in *Federalist Paper* 51 allow each branch of government to follow its own ambitions? Apparently, he did not expect constitutional actors to elevate their motives and subordinate their interests.

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<sup>17</sup> "As we consider ethics in public administration, we need not base our inquiry on regime values but instead on common spiritual values of mankind (...). In public administration we have abandoned the politics/administration dichotomy. Is it that much harder to abandon the spiritual wisdom/values dichotomy brought to us by secularization thinking?" (Lynch, Omdal, and Cruise 1997: 484).

Likewise, one could say, public servants fulfill their constitutional duty when they ‘just do their job’ (and not, of course, try to subvert the Constitution). Upholding the Constitution, though their duty, is not their job.<sup>18</sup>

## 5. Applicable outside the U.S.?

To assess the applicability of the concept of regime values outside America to other states, one cannot simply go about studying the regime values of those states empirically. The reason is not that empirical study as such falls outside the scope of the constitutionalist approach (Rohr’s writings are very well-informed about the constitutional and administrative practices of other states), but that it would be putting the cart before the horse: in order to find the regime values of other states, we should first know whether and how the concept applies there. To this (admittedly narrow) question I now turn.

Until the present day, the constitutionalist approach has remained almost entirely confined to the American study of public administration and it has not widely disseminated internationally. In particular, the approach has found little resonance in European public administration –which is strange, because in (Continental) Europe public administration is traditionally related to the highest values of the state (Stillman 1997; Rutgers 2001). To a considerable degree, the American constitutionalist theorists themselves seem responsible for this limited appeal of their approach in other parts of the world. Through their strong associations with the earlier mentioned ideological battles of the 1980s and 1990s, and their almost exclusive focus on the American Founding, they have given their contributions a typical American twist. So for a successful dissemination, the concept of regime values underlying public administration will need better theoretical underpinnings. They should not be derived exclusively from originalist readings of the American Constitution, other Founding texts, and Supreme Court opinions, but from the constitutionalist arguments underlying those venerable documents. A more political philosophical and less

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<sup>18</sup> The constitutional actors for whom ‘job’ and ‘duty’ presumably most closely approximate each other are Supreme Court Justices. However, even for them there is a difference, as their most immediate task is to adjudicate the particular cases on their desk. In doing so, they often have to (re)interpret and thus uphold the Constitution, but the ‘upholding’ itself is not even *their* most immediate task, but rather a sort of positive side-effect.

legalistic approach would make the constitutionalist approach and the concept of regime values better suited to other polities as well.

That such an approach is not without risk is illustrated by Terry Cooper. He has made an attempt to extend the concept of regime values “beyond Rohr’s specific focus on the U.S. Constitution” (although still associated with “the American tradition”) and has thus come up with a much broader list of values, including: “the beneficial aspects of a pluralism of interest, the creative possibilities in conflict, the sovereignty of the public, the rights of the minority, the importance of citizen participation in government, the societal values of freedom of expression, and the centrality of justice in the relationship between the people and their government” –and these, Cooper adds, are “but a few exemplary values” (2006: 195). We see that as soon as one loosens Rohr’s tightly American reference points, the number and vagueness of regime values easily becomes unmanageable.

Still, if the concept must be applied outside America, it is imperative to adopt a less particularistic and, I would argue, a more political philosophical approach. In *Ethics for Bureaucrats*, Rohr says students of public administration can be assumed to accept the American regime as fundamentally (though not perfectly) just.<sup>19</sup> That can be inferred, he argues, from their choice for a professional education (1989a: 70). He recognizes that the questions about the justice of the regime they are going to serve are more important than, and indeed prior to, other questions of administrative ethics, but for practical reasons, public administration students cannot be expected to delve deeply into these (inherently political philosophical) questions:

“The price, then, that the professional study of ethics for bureaucrats exacts from the curriculum is that questions of political philosophy (‘Is the regime just?’) must yield to less fundamental questions such as ‘How can I promote the values of the regime?’ The method of regime values eschews metaphysics and addresses the students in the existential situation in which it finds them – persons who have taken or are about to take an oath to uphold the values of a particular regime. It admonishes them that taking such an oath presupposes an acceptance of the fundamental justice of the regime but does not require into

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<sup>19</sup> A regime is ‘fundamentally’ just, according to Rohr, if the values it actually achieves are consistent with its professed values and with the personal values of its citizens, or if it has enough “corrective mechanisms that offer some hope of reform” to the extent that it falls short of this consistency. As Rohr wisely adds: “It should be noted that [this definition] will lead to no more than a subjective understanding of justice that falls far short of the questions that philosophers have raised over the centuries” (1989a: 91-92, note 39).

how the students arrived at the conclusion that the regime is just” (1989a: 70-71).

Now these observations may be justifiable for educational purposes (although one can ask whether “the price” is not too high), but as soon as we ask whether Rohr’s notion of regime values is also applicable to other regimes than the American one, we cannot avoid asking about the justice of those regimes. Here is why: if the fundamental justice of a regime must be presupposed before we can study its regime values, then apparently justice itself is not a regime value.<sup>20</sup> But when a regime systematically tramples upon freedom, equality, or property, that regime cannot be fundamentally just. Systematic violation of regime values itself makes a regime ‘fundamentally unjust’. So questions about the justice of particular regimes are unavoidable.

Finally, the international applicability of the concept of regime values is also hampered by its tight connection to the oath of office. Rohr is aware of the fact that the practice to swear such an oath may not exist in other countries (1989a: 91, note 34), but he does not draw the conclusion that making the authority of regime values dependent on such a practice drastically limits their applicability abroad. It seems to do more justice to the concept of regime values itself, however, when the connection is loosened. Neither the obligation to promote the values of the regime nor their content depends on the institution of the oath, but rather vice versa: the oath itself is an expression of the regime values of a particular polity. This is not to deny the value of the institution of the oath of office, but to ask attention for its moral basis.

More particularly, it is striking that Rohr says repeatedly that American public officials swear an oath to uphold the regime, the values of the regime, or the values of the Constitution, whereas strictly speaking they take an oath to uphold the Constitution itself. Now the Constitution is clearly more specific than the regime and its values. It contains sometimes very detailed articles about the relations between the Union and the states, the responsibilities of the three branches, their respective modes of election and/or appointment, the requirements for their incumbents, and so on. Although, as Rohr says, the obligation to swear to uphold the Constitution as “the supreme law of the land” lies primarily in its being supreme, the Constitution is also really a *law*. If it is true that American officials commit themselves not only to uphold

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<sup>20</sup> Or is the fundamental justice of the regime something different than the justice bureaucrats have to promote through their work? Rohr makes no effort separate those two understandings of justice. To the contrary, he relates them closely to each other: “In the case of a regime that is fundamentally unjust, a good person could not be a good public servant and remain a good person” (1989a: ix).

the *values* of the regime or the Constitution, but swear to uphold the Constitution itself, this obligation is clearly not readily transferable to other countries.<sup>21</sup>

#### 6. Improving upon Rohr's concept

In my view, Rohr has convincingly shown it is compelling to treat public administration as a legitimate and important institution within the constitutional order—not only of the United States, but also of other Western constitutional democracies (cf. Rohr 1995, 2002). The constitutional approach he has initiated and developed is illuminating. His notion of regime values, however, suffers from some serious problems. As we saw, Lawler went so far as to call the concept “unnecessarily vulgar and misleading”. Although he did not explain his harsh words, we may now begin to understand why he used them. The vulgarity of regime values, firstly, has apparently to do with terminology. Classicists (even when not strictly Straussian) such as Lawler have a tendency to abhor neologisms in general and the concept of values in particular. Maybe they sometimes overreact, but they do rightly point to a deep paradox in the half-ancient, half-modern concept of ‘regime values’. Secondly, the (potentially) misleading character of the concept has apparently to do with its hidden contingency. At first sight, Rohr's regime values seem firmly rooted in the American constitutional tradition, especially in the oath to uphold the Constitution and the authoritative interpretations of the Constitution by the Supreme Court, but on closer inspection, each of these supposedly solid reference points is too contingent to give secure moral guidance and too particularly American to make the concept useful in other contexts.

Now we can of course, with Lawler, gladly rid ourselves of the phrase of ‘regime values,’ but then probably the concept referred to by that phrase will continue to haunt us. The constitutional approach to public administration itself seems to presuppose that concept. Therefore we should rather try to improve upon Rohr's concept and make it more widely applicable. To this purpose, I propose to recognize the normative character of ‘regime values’ more frankly and compare the concept to, for instance, that of ‘family values’ or ‘academic values’. These are not any values particular families or universities happen to have, but values that are believed

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<sup>21</sup> In this connection, it can be noted that Wilson speaks literally about administration as running ‘a constitution’ and not as running ‘the Constitution’ (as correctly cited in the title of Rohr 1986).

necessary to make families or universities in general prosper. To put it briefly (perhaps too briefly): they are not so much values *of* a family or university as values *for* the family or university. I suggest the case of ‘regime values’ can be treated in a similar way, namely much more as a normative than as an empirical concept, referring to the values, not of any particular historical regime, but of the quintessential or simply the best regime.

This of course recalls Aristotle’s double use of the word *politeia*. It is noticeable that Rohr, in his exposition on regime values, refers repeatedly to Aristotle.<sup>22</sup> The political philosophy on which his exposition rests, is indeed in large part Aristotelian. His understanding and use of the concept of ‘regime values,’ however, are arguably not yet Aristotelian enough. For Aristotle, *politeia* is not only the generic concept for regime (in the broadest sense of the word, as Strauss noted), but it is also the name of one particular regime, namely the best practically possible regime (Aristotle 1279a38-40).<sup>23</sup> In the latter sense, *politeia* is a mixture of oligarchy and democracy, i.e. of rule by the well-to-do few and the not-so-well-to-do many (1293b34-35). Thus it blends two partial and biased understandings of the ‘regime value’ of (distributive) justice into one normative structure (1280a7-1281a10). Aristotle makes it quite clear, though, that the exact form of the best practically possible regime can differ “relatively to given conditions”: “a particular government may be preferable, but another form may be better for some people” (1296b9-10).

Applying these Aristotelian notions (here only briefly expounded) to Rohr’s concept of regime values, we can say that the values of the American regime (and of other modern regimes) should be supported because and to the extent in which they approximate the values of the best practically possible regime. They are not solely based on the actually functioning regime, which may not be flawless, but on a not unattainably improved imagined version of it. Studying regime values in this way is at once more simple and more difficult than studying them in Rohr’s original way: it spares us the difficult task to carve out what are the actual regimes values expressed

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<sup>22</sup> Namely in his discussion of the justice of the regime (1989a: ix-x), in his explanation of the term ‘regime’ (pp. 3, 68), in referring to the idea that every subject matter should be treated with the proper amount of precision (p.73), in a discussion about the difficulty to dichotomize between state and society (pp. 90-91, n.33), in the assertion that regimes must not only be studied legally, but also empirically (p. 91, n.35), in a point about the continuous importance in political philosophy of thinking about regimes (p. 92, n.40).

<sup>23</sup> The best practically possible regime (*politeia*) for Aristotle is not the best (abstractly) conceivable regime, which is monarchy.

by our constitutional and other governmental institutions, but it requires us to embark on the perhaps even more ambitious task of thinking about the best practically possible regime in our particular (mostly national) circumstances. Here inevitably political philosophical questions creep in again that will and must go far beyond the everyday concerns of most public administrators. But in any case, in this more normative understanding, the concept of regime values is also applicable to other countries than the United States.

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