

Regime Change for Regime Values?

Applying the Constitutionalist Approach to Public Administration Outside America

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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.

1. Introduction

What has been true for Kant in philosophy and Rawls in political theory 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 modest attempt is made to investigate only one concept from Rohr's work, namely the concept of 'regime values'. Given the current interest in public values, it seems fitting to subject this concept to closer scrutiny.

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, n.16). He adds he is glad Rohr has left the phrase out of later publications and wishes his example will be followed.

The absence of a phrase need not mean that the concept to which that phrase refers is also abandoned, however. Since Rohr has nowhere explicitly renounced the concept of regime values (as far as I know), one could suspect it still lurks somewhere behind his arguments. Reversely, if there are good reasons for the abandonment of both the phrase and the concept, attempting to articulate those reasons seems a worthwhile enterprise. So this paper aims to examine the meaning and usefulness of the concept of regime values as a normative foundation for public administration, and, more particularly, to 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 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 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 are aware that in his famous 1887 essay Woodrow Wilson 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 fell in disgrace during the 1930s and 1940s, the second dichotomy has remained uncritically accepted for nearly one century. All that time, constitutional matters were grossly neglected in the study of administration.

An exception to this rule has been the work of Norton Long. In an essay aptly 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). Long's calls received no immediate resonance in the field of public administration, however.

Only in the 1980s a full-fledged constitutionalist approach to public administration emerged with the work of Rohr. Rohr was not entirely original, though. 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.¹ Storing, in turn, was a pupil to the well-known political philosopher Leo Strauss, who also taught in Chicago. Though not necessarily Straussian in the strict (and contaminated) 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.

¹ 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 critical review of Simon's administrative thought (1962) and a more sympathetic review of the work of Leonard D. White (1965).

Pangle 2006: esp. 115-117). As said, Rohr has been very successful 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.²

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 reconciled to 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 small, but politically the combination is certainly odd. At least in part, this position should be understood as a reaction to neo-liberal bureaucrat bashing in the 1980s and 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 U.S. 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.³ Examining these interesting confrontations falls outside the scope of this paper, but even if one basically accepts

² Cf. Rohr 1995: xiii, including note 6, for a helpful, though out-dated overview.

³ 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).

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 statesmen (or, more fashionably, leaders) erodes the meaning of statesmanship (and leadership) as an ideal.⁴ Likewise, catch phrases like ‘constitutional balance wheel,’ though understandable from the political climate in which they originated, should be abandoned 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 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 is alien to this order and an open invitation to bureaucratic arbitrariness and license. In addition, it should be acknowledged that public administration, though autonomous in some respects, must in general remain subordinate to the traditional three branches (an aspect Rohr recognizes but insufficiently emphasizes; e.g. 1986: 181-185). Administrative decisions can never be as authoritative and definite as legislative, executive, or judicial decisions. Especially from a constitutionalist point of view, the constitutional legitimacy of public administration has to be complemented with notions like the primacy of politics and political accountability.

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.

⁴ 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.⁴ In any case, “true statesmen are rare” and “*administrative* statesmanship is a drastically limited version of the original concept” (1998: 107). He adopts the useful distinction between “being a statesman” and “performing acts of statesmanship” and he adds: “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).

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 1989). 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 most appropriate starting point for the study of administrative ethics.⁵ To do him justice, it must be stressed 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" (1989: 77) or, in the earlier version, "career-oriented students" (1976: 402). This context explains many peculiarities of Rohr's concept of regime values, for example their being relatively general: it is impossible and undesirable, he argues, to discuss all the varied ethical problems of different government agencies in the classroom (1989: 71-72).

Interestingly, as recently as 1998, Rohr has returned to the concept, with 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" (1989: 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" (1989: 70). This oath is indeed

⁵ Like many others in the field, 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.

required by the Constitution itself⁶ and implies, for Rohr, a direct obligation to promote the values of the regime (1989: 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” (1989: 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.⁷ 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” (1989: 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 decisions are institutional, dialectic, concrete, and pertinent (1989: 77-84).⁸

Notwithstanding the massive importance of the Constitution, the oath of office, and the Supreme Court interpretations, 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:

⁶ 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...”.

⁷ Rohr says he rejects social equity because it is based “to a considerable extent on normative political philosophy and humanistic psychology” (1989: 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).

⁸ 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, the Court depends on precedents, whereas administrators must of often chart new territory (Denhardt 2007: 121).

“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 1989: ix-x).⁹

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).

3. Regime, values, and regime values

As said, Rohr’s work has been criticized from outside and from inside 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:

“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).

⁹ “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.

Although eloquently formulated and indeed 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.¹⁰ 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 ratification of the Constitution (a historical event) in Fox and Miller's comment is a good example.

This does not mean the concept of regime values itself cannot be problematic. To see how meaningful and useful Rohr's concept of regime values 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 makes quite an effort explaining what he means by 'regime' and 'values'. So for him, apparently, understanding these separate concepts is at least helpful to understand his compound concept.

Rohr himself elaborates on the meaning of regime: "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 fundamental political order established by the Constitution of 1789" (1989: 3; also p. 68).¹¹ 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

¹⁰ Thayer gives another inaccurate characterization of Rohr's position when he says 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 seems to be a misunderstanding. For Rohr, the regime is clearly the bearer of these values. And even when he would say these values can only be enjoyed by human persons that would not of course make him an individualist.

¹¹ 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).

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 1989: 90-91, n.33).

With this interpretation of Aristotle’s concept of *politeia*, Rohr is certainly not idiosyncratic. Leo Strauss, the teacher of Rohr’s teacher, explains 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 determined by the latter (1953: 136). Therefore, he 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.

In the present context, however, the footnote raises some serious questions. As is generally known, the Americans have a weak sense of state (Dyson 1980; Rutgers 2001; Stillman 1990, 1997) and the state/society dichotomy easily collapses in their mind. But if, for Rohr, regime values are ‘society values’ rather than ‘state values,’ why then does he not study American society rather than to the epitomes of the American ‘state’ –the Constitution and its Supreme Court interpretations? And if ‘regime’ refers to society rather than state, how can a regime be ‘fundamentally (un)just’? And does this mean that American officials swear to uphold (the values of) society rather than (those of) the state? Of course, America has a popular regime (though intended, importantly, as a republic rather than a democracy) and the American people have promulgated the Constitution. Yet, in swearing to uphold (or more literally, ‘support’) the Constitution public administrators do not submit to the variable will of the people, but to one particular expression of the people’s will, laid down in the Constitution. Ultimately, American officials may even be called to uphold the people’s Constitution against the people itself (except, of course, in an orderly process of constitutional amendment). These are all complications which Rohr will no doubt be aware of, but which he brushes aside by his conceptualization of ‘regime’.

Something similar happens with the other conceptual element of ‘regime values,’ the concept of values: “By ‘values’ I mean beliefs, passions, and principles

that have been held for several generations by the overwhelming majority of the American people” (1989: 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” (1989: 92, n.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, 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. Still, there is something paradoxical about the notion of regime values, as it combines the ancient concept of ‘regime’ (*politeia*) with the modern concept of values. Thus the *querelle des anciens et modernes*, which was so vividly reopened by Strauss, easily ignites in the very heart of Rohr’s concept.

A final problem with the concept is that regime values are certainly not the only or even the highest kind of values bureaucrats have to promote.¹² As Waldo has shown, bureaucrats find themselves in a myriad of multiple and often conflicting obligations, including not only the Constitution, but also 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). Some authors have criticized Rohr for not casting his net widely enough: “Limiting research on values in public administration to those associated with a

¹² Rohr himself says that regime values “are not the highest values to which a regime might aspire” (1989: 76). So he says not simply that public administrators may aspire to values higher than regime values (that seems plausible enough; Rohr is no Machiavelli asking us to love our city more than our soul), but he says that *the regime* does so. One wonders what these values could be.

regime ignores the accumulated spiritual wisdom developed over centuries of human experience” (Lynch, Omdal, and Cruise 1997: 475; cf. Jennings 1991).¹³

Rohr is well aware of the myriad of other obligations (1989: 84), but he also realizes that these obligations do all not have equal status or pertinence for civil servants. In particular, he emphasizes that, with their oath of office, American civil servants accept a special obligation to the Constitution. One may ask, however, what this obligation 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 duties. The question is, however, whether the Constitution (or the constitutional tradition) itself requires this. Did not Madison in *Federalist* 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. Likewise, one could say, public servants fulfill their constitutional duty when they ‘just do their job’ (and of course not try to subvert the Constitution). But upholding the Constitution, though their duty, is not their job.¹⁴

5. Applicable outside the US?

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 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 not widely

¹³ “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).

¹⁴ 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 primary task is to adjudicate the particular cases on their desk, sometimes by (re)interpreting the Constitution. Doing so, they uphold the Constitution, but the ‘upholding’ itself is not even their primary task (but rather a positive side-effect).

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 regime values underlying public administration should be underpinned more theoretically. They should not be derived exclusively from originalist readings of the US Constitution, other Founding documents, and Supreme Court opinions, but from the constitutionalist arguments underlying those venerable documents. A more political philosophical and less legal(istic) 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, however, without risk is nicely 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 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 says, are “but a few exemplary values” (2006: 195). So as soon as one loosens Rohr’s tightly American reference points, the number and vagueness of regime values easily becomes unmanageable.

Yet, if the concept must be applied outside America, it is unavoidable to adopt the more political philosophical approach. In *Ethics for Bureaucrats*, Rohr says students of public administration can be assumed to accept that the American regime is fundamentally (though not perfectly) just. That can be inferred from their choice for a professional education (1989: 70). He recognizes that the questions about the justice of the regime they are going to serve are more important and logically prior to any 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 how the students arrived at the conclusion that the regime is just” (1989: 70-71).

Now these observations may be all right 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.¹⁵ 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 those other regimes are unavoidable.

Finally, the international applicability of the concept of regime values is also hampered by Rohr’s strong connection with the oath of office. Rohr is aware of the fact that the custom to swear such an oath may not be common in other countries (1989: 91, n.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. In addition, it is striking that Rohr says repeatedly that administrators swear an oath to uphold the regime, the values of the regime, or the values of the Constitution, whereas *strictly* 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 fairly detailed articles about the relations between the Union and the states,

¹⁵ 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” (1989: ix).

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 the *values* of the regime or the Constitution, but swear to uphold the Constitution itself, this obligation is not readily transferable to other states.¹⁶

6. Conclusion

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 is problematic, however. As we saw, Lawler even called the concept it “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. 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. On closer inspection, however, each of these supposedly solid reference points is too variable and 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 will continue to haunt us. 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. Compare them to, for instance, ‘family values’. These are not any

¹⁶ In this connection, it is noticeable that Wilson speaks literally about running ‘*a* constitution’ and not about running ‘the Constitution’ (correctly cited in the title of Rohr 1986).

values particular families happen to have, but values that are believed necessary to make families in general prosper. To put it briefly (perhaps too briefly): they are not so much values *of* a family as values *for* the family. I suggest the case of ‘regime values’ can be treated similarly, namely much more as a normative than as an empirical concept, referring to the values, not of any 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.¹⁷ His use of the concept of ‘regime values,’ however, seems not Aristotelian enough. For Aristotle, *politeia* is not only the generic concept for regime (in the broadest sense of the word, as Strauss said), but also one particular regime, namely the best practically possible regime (though not the best conceivable regime). As the best practically possible regime, *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 (Aristotle 1293b34-35). Thus it blends two partial and biased understanding of the ‘regime value’ of (distributive) justice into one normative structure (1280a7-1281a10). Likewise, the values of the American regime, or any other regime for that matter, should be supported because and to the extent they approximate the values of the best regime. Studying regime values in this way is at once more simple and more difficult: it saves us the difficult task to carve out what is typically American (or British, German, etcetera) about our regime values, but it requires us to embark on the perhaps even more ambitious task of thinking about the best regime. Here inevitably political philosophical questions will creep in again. But in any case, in this more normative understanding, the concept of regime values is also applicable outside the United States.

¹⁷ Namely in his discussion of the justice of the regime (1989: 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).

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