Creating State Legitimacy – the Five Basic Models

Bo Rothstein
Department of Political Science
The Quality of Government Institute
Göteborg University
Box 711
SE 405 30 Göteborg
SWEDEN
Bo.Rothstein@pol.gu.se
www.qog.pol.gu.se

Abstract

In this paper, I will challenge the widespread idea that democratic elections can be the main instrument for creating political legitimacy and discuss what other types and forms of political practices that may (and may not) create political legitimacy. The argument I criticize is that people will accept a political authority because they have been given the right to take part in "free and fair elections", resulting in a government that represents the majority of the people that have used their right to vote and thus become members of the legitimate "demos" in democracy. In this way, government policies will represent the "will of the people". Those who are not part of the majority will accept the outcome because they have a fair chance of becoming the majority in the next election. My argument is that political legitimacy is created, maintained and destroyed not at the input but at the output side of the political system. That is, political legitimacy depends on the *quality of government*, not on the quality of elections or representation. In addition to the "rule of law" argument, I present four additional models for creating political legitimacy.

"BE NICE TO AMERICA….. or we'll bring democracy to your country!"

Driving around my hometown of Göteborg in West Sweden, one can occasionally spot cars with a red bumper sticker with the above sentence written on it.[1] Behind this ever so funny sentence is the now widespread idea that the Bush administration's efforts to create a legitimate political authority in Iraq by introducing electoral mass democracy has failed miserably. Even though the Iraqi people have cast their votes several times in surprisingly large numbers, and even though the elections were carried out in a reasonably orderly and - for this part of the world - surprisingly fair manner, the Iraqi government has been unable to establish itself as the legitimate political authority in the country. In his *Address to the Nation* on December 18, 2005, George W. Bush stated the following:

> Three days ago, in large numbers, Iraqis went to the polls to choose their
> own leaders -- a landmark day in the history of liberty. In the coming
> weeks, the ballots will be counted, a new government formed, and a
> people who suffered in tyranny for so long will become full members of
> the free world.[2]

To state it mildly, things did not develop as the current U.S. administration and its intellectual entourage had predicted (Plesch 2005). Enabling the Iraqi people to vote and thereby to choose who is going to wield political authority over them did not create political legitimacy (Rangwala 2005). Going back to the arguments that were presented for the invasion by the Bush administration and its supporters, this development seems to have come as a big surprise (cf. Frum and Perle 2003). Why should people go on fighting when they have ousted a brutal dictator and now have a government that they have elected? In a so called "fact sheet" titled Democracy in Iraq, issued on December 12, 2005, the White House stated that:

> Two and a half years ago, Iraq was in the grip of a cruel dictator. Since
> then, Iraqis have assumed sovereignty of their country, held free
> elections, drafted a democratic constitution, and approved that

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[1]See http://www.stickergiant.com/, click "social-political", "progressive" and "anti-bush".

[2] http://www.whitehouse.gov/news/releases/2005/12/20051218-2.html

constitution in a nationwide referendum. In three days, they will go to the polls for the third time this year and choose a new government under their new constitution. Difficult work remains, but 2005 will be recorded as a turning point in the history of Iraq, the Middle East, and freedom.[3]

The idea that democratic elections are an efficient way to create political legitimacy has not only been criticized in the aftermath of the Iraq war; it has also been questioned in other conflict ridden areas such as the Balkans (Ragaru 2003). It should, however, be added that in thinking that democratic elections resulting in rule by a majority creates political legitimacy, the Bush administration does not hold a particularly deviant view. Instead, this idea seems to be taken for granted in the scholarly debate as well as by leading international organizations (Goodwin-Gill 2006). The liberal Danish Prime Minister, Anders Fogh Rasmussen, recently made the following comment when the Danish troops returned home from Iraq:

> What we aimed at the Iraqi people also got. We were successful in carrying out to referendums about a new constitution and a democratic election for a government that everyone has recognized as free and fair. But I have honestly to admit that I underestimated the strength of religious fanaticism that fight against freedom and democracy. Like many other westerners I believed that that demand for democracy and freedom was so universal and strong among all kinds of people, that the foreign troops would be received with open arms as liberators.[4]

In this paper, I will challenge the idea that democratic elections can be the main instrument for creating political legitimacy and discuss what other types and forms of political practices that may (and may not) create political legitimacy for a government. Legitimacy is - as are most central concepts in political science - both an important concept and a problematic one, as well as at the same time being hard to define. The literature seems to give the following four ideas of what makes a government legitimate. People may accept the political authority in their country out of a) tradition or b) because the political leader(s) have a certain personal appeal or style (charisma), or c) because their political leaders bring a certain amount of good things (services and benefits) to them or d) because the leaders have been selected in some

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[3] http://www.whitehouse.gov/news/releases/2005/12/20051212-1.html
[4] Danish daily newspaper Politiken, August 9, 2007, my translation.

procedural way that the people deem legitimate (Barker 1980). I will have nothing to say about the two first points in this paper. C is interesting because it comes in two forms – one is that a government can achieve political legitimacy because it serves some notion of the "common interest" in coordinating citizens' activities in a socially beneficial way thereby gaining acceptance for some of its policies from a very large part of the population (Przeworski, Stokes and Manin 1999). Or it can obtain legitimacy by a just large-enough part of the population (e.g. a narrow majority) or a large segment of powerful interest groups because the government in question decides to give them special benefits, often at the direct or indirect expense of the minority (Zakaria 2003). The problem here is that there are many groups that for various reasons have not been able to solve their problem of collective action (e.g. consumers, the unemployed). The latter type of legitimacy is usually treated under labels such as "political patronage", "political machines" or "neo-corporatism" and I will make an occasional comment on this. The last and - for the following discussion - most important point is usually understood as legitimacy by procedural constitutional representative democracy. People will accept a political authority because they have been given the right to take part in "free and fair elections", resulting in a government that represents the majority of the people that have used their right to vote and thus become members of the legitimate "demos" in democracy. Those who are not part of the majority will accept the outcome because they have a fair chance of becoming the majority in the next election. This procedural package comes with a bundle of other rights for articulating interests, such as the right to stand for office, the right to organize, freedom of expression, etc.

My aim in this paper is to challenge the widely held idea that it is electoral democracy that is the key for creating political legitimacy and to present an alternative. Needless to say, this is not an argument from my side against electoral democracy as such, which I believe is an indispensable part of democracy, but against the idea that it can serve as the main pillar for creating political legitimacy. As I will expand on below, electoral/ representative democracy serves as a "reality check" for the ruling political elite, but this is something that is not at all, or only vaguely, related to political legitimacy. In brief, my argument is that electoral democracy is highly overrated when it comes to creating political legitimacy, which instead is related to what takes part in the exercise (or stage of implementation) of public policies. In other words, legitimacy is created, maintained and destroyed not at the input but at the output side of the political system. That is, political legitimacy depends on the *quality of government*, not on the quality of elections or representation (Rothstein and Teorell 2008).

Electoral democracy and legitimacy

The idea that electoral democracy is the key to political legitimacy is, to say the least, widespread (Goodwin-Gill 2006). For example, one of the most prominent scholars in this field of research is Guillermo O'Donnell. When in 2006 he received the first "Lifetime Achievement Award" from the International Political Science Association (awarded "for the advancement of political science"), he was given, as is customary, the honor to present a keynote speech. In this speech he claimed that "across most of the globe today, the ultimate claim of a political regime to be legitimate - or at least acceptable - rests on the kind of popular consent that purportedly finds expression in the act of free voting" (O'Donnell 2007, p. 6). It has also been stated that legitimacy is the ultimate goal for all known systems of governance (Gilljam and Hermansson 2003, p 15). There seem to be three ideas behind this claim. One is that "free voting" is based on the principle of "political equality", which according to Robert Dahl is the basic norm that renders legitimacy to a political authority (Dahl 2006). While most democracies have some kinds of restrictions on who has the right to vote (prisoners, people with severe psychiatric illnesses, etc. may be excluded), and quite a few democracies ban certain types of (extremist) parties and political expressions (Issacharoff 2007), political equality that translates into "one citizen one vote" can be seen as a signal from the state that it treats all citizens with "equal concern and respect" (Dworkin 1977). This sign of respect may of course in itself create a form of legitimacy. The second argument is that numbers count and at the end of the day the majority should have its way in decisions about public policies. Thirdly, for the minority electoral democracy presents the possibility that the next time around they may stand a new chance of becoming the new majority (O'Donnell 2007). In all three arguments, the main idea is that political legitimacy is created (or located) on the input side of the political system in that it serves as an effective form of interest articulation. With electoral democracy at least some approximation of the realization of "the will of the people" is thought to be carried out (Esaiassion 2003). In article 21 in the UN Declaration of Human Rights, this is stated as follows:

> The will of the people shall be the basis of the authority of government; this
> will shall be expressed in periodic and genuine elections which shall be by

universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The first question is of course if something like the Rousseauist "the will of the people" can in fact be said to exist. How can we distinguish between sudden changes of popular opinion and what is the long-term interest of the people? Think of a society dominated by strong clan-based loyalties and where it is customary for those elected to public office to use public funds for the well-being of their clan. However, if most citizens were assured that members of the other clans would refrain from such practices when in office, then people would likely prefer to get rid of their clan based semi-corrupt system and replace it with a more universal system (cf. Mungiu-Pippidi 2006). Since most clan leaders/members distrust the other clans in honoring such an agreement, however, the system is stuck in an inefficient patronage type equilibrium. To decide what the "will of the people" is in a situation like this is impossible. Let me take another example. In 1955 a referendum was held in Sweden on whether the regulation of traffic should be changed from left- to right-hand side driving. All neighboring countries had already changed or had decided to change to right-hand side driving (and Volvo as well as SAAB only produced cars for right-hand side driving!) so the argument for a change was pretty straight-forward. Nevertheless, 82.9 percent voted in favor of keeping left-hand side driving and only 15.3 percent voted for a change. However, in 1963 the Swedish Parliament decided that the country should switch, a decision that met with very little opposition. Moreover, after the change was carried out, it received massive popular support. I would guess that, if asked, 99 percent of Swedes would say that this was one of the wisest decisions that their political representatives have ever made. In cases like this (and they are many) it is actually very hard to tell what is "the will of the people". The Swedish universal day-care/pre-school system that today is very much the pride of the nation for strengthening gender equality, had very little popular support when it was launched in the early 1970s (Westerståhl and Johansson 1985).

Another common critique against the "will of the people" theory is that even in a well-established democracy, political leaders or other elites have the resources they need to manufacture whatever "will of the people" they want (Esaiassion 2003). While I agree with Gerry Mackie (2003)and Donald Wittman (1995) that the social choice type of critique against electoral/representative democracy is one of the most overblown discussions in the social sciences ever to have taken place, there exist many other problems for the argument

about how this system can generate legitimacy that warrant a discussion. One place to start such an analysis is Norway. In the 1990s, the Norwegian government, like its neighboring Scandinavian countries, organized a type of mega social science research project about how well the country's democracy works. This research program was led by three political scientists, one sociologist, and one in cultural studies and it engaged over a hundred scholars from a great variety of disciplines not only from the social sciences but also from law and the humanities. Studies about almost every aspect of Norwegian democracy were carried out between 1998 and 2003, culminating in a final report written by the scholars in charge of the program. To state it mildly, this report gives a very bleak picture of how well the Norwegian democratic system works. Summarizing the main findings, the leaders of the program wrote as follows:

> The parliamentary chain of government is weakened in every link; parties and elections are less mobilizing; minority governments imply that the connection between election results and policy formation is broken; and elected assemblies have been suffering a notable loss of domain. (Østerud and Selle 2006)

They also pointed to other ways in which Norwegian representative democracy had become "eroded", for example that the parliament had lost power to market forces, that mass media had become more dominated by the logic of the market, and that parties and other institutions of interest articulation (i.e., major nation-wide interest organizations) functioned less well and managed to recruit fewer members and activists (Selle and Østerud 2006).[5] What is interesting from the perspective of the chances that electoral democracy can create political legitimacy is that this is the normative ideal on which the report (and the whole research program) was built (Tranvik and Selle 2003). The research design of the program was such that the many empirical studies (on almost every thinkable aspect of the workings of Norwegian democracy) were evaluated against this normative ideal presented as the "parliamentary chain of government" (cf. Olsen 1992). This chain starts with the voters and

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[5] It should be noted that the Danish Power study that was carried out under the same period as the Norwegian project came with a much more positive report about the status of Danish Democracy (see Christiansen & Togeby 2006). That two similar large research programs in two countries as similar as Denmark and Norway, using the same normative ideal about what should count as a good democracy, can produce so very different results is of course in itself interesting. Not all of this can be explained by differences in what has taken place during the last three decades in these countries.

ends with the political decisions that are implemented, and in between are all the institutions that form a representative parliamentary democracy (Christiansen and Togeby 2006).

In a very thoughtful (and positive) review of this report, Stein Ringen made an interesting comment (2004). While he did not disagree with the many criticisms against the workings of the Norwegian democracy that were launched in the report, he pointed out the following puzzle. Today Norway is an extremely rich country with a highly educated electorate. The income from the North Sea Oil creates an unmanageable budget surplus for the government. For many years the country has been characterized by a peaceful political situation and weak social conflicts, with a democratic tradition going back to at least 1814 when the constitution was created. Furthermore, this is a country with a very generous welfare system, few industrial conflicts, an ethnically homogenous population and a political culture built on compromise, full respect of minority rights and no known violations of human rights or liberties. Together with the other Nordic countries, Norway ranks at the very top in the UNDP measure of "human development". Corruption is by standard measures one of the lowest in the world and politicians are for the most part seen as honest and benevolent. Ringen's most interesting remark in his review was that if it is not possible to get a system of electoral/representative "will of the people" type of democracy to work reasonably well in a country like this, then where on earth is such a system going to work? If this is what the empirical reality looks like in rich, peaceful and homogeneous Norway, then what are the chances that this system of democratic representation will work to create legitimacy in countries like Iraq, Nigeria or Bosnia?

Moreover, the Norwegian problems with democracy are not unique – the paradox is that while electoral/representative democracy is hugely successful on the global level, especially considering the number of countries that have introduced (some variant) of this system and (not least) as a normative ideal, citizens who actually live in countries that practice the system are less and less satisfied with its actual workings. Trust in central political institutions of electoral/representative democracy (parties, parliaments, politicians, local governments), appears to be down in most established democracies (Dogan 2005; Holmberg 1999a; Pharr and Putnam 2000). There is also no lack of empirical studies that show important problems in the central institutions of the "democratic chain of command" for the other Scandinavian countries (Esaiasson and Holmberg 1996; Teorell 1998). In Sweden, the congruence in political opinions between the Members of Parliament and the majority of the electorate on a

number of specific issues has been measured since the late 1960s. The result is not impressive since the congruence is far lower than a lottery-machine would have produced (Holmberg 1999b). Moreover, Swedish survey research does not show a positive correlation between citizens' political trust and congruence between their opinions and the opinions of their elected representatives on a number of political issues (Holmberg 2000). From twenty yearly survey studies on the degree of confidence that Swedish citizens have in various political institutions comes a truly puzzling result. The ones for which they can elect who to govern them (the political parties, the unions, the EU-Parliament, the Swedish Parliament, the city councils, etc.) have much lower ratings than the ones in which citizens have no say about who wields power, such as the public health care system, universities, the courts, the police, the social service, the Central Bank and the Royal Family (Holmberg and Weibull 2007). Thus, Swedish citizens have greater confidence in *appointed* power-holders (doctors, professors, judges, policemen, central bank leaders, the King) than they have in the ones they have elected.

The shortcomings of the established representative system for producing an unbiased or reasonably well-informed "will of the people" has resulted in some pretty radical suggestions for alternative models (Ackerman and Fishkin 2004). Still, most observers would argue that it is "crying wolf" to proclaim that the Scandinavian democracies (or other established Western style democracies) are in a state of deep crises and/or that they are on the verge of collapsing and being replaced by something else. True, political parties are not always havens for democratic procedures. True, Murdoch style mass media is not an ideal for unbiased political information. True, private money plays a troubling role in many democracies. True, voting is lower than we would have hoped for. True, interest and lobby groups play, many times, a dubious role. True, powerful bureaucracies have been known for derailing the policy intentions in the implementation process. The list can go on and on. In fact if, as Robert Dahl states, political equality (2006) is the norm that underpins electoral/representative democracy, and if this is to be understood as giving this system legitimacy by ensuring that every citizen has the same chance of influencing public policies, then every known national democracy is (and will always be) light years away from realizing this ideal. At the end of the day, with all this empirical knowledge about how far from the ideal our "really existing" Western style democracies work, we have to ask ourselves if there is something else than this Rousseauist ideal that makes them legitimate in the eyes of citizens than the electoral/ representative "will of the people" chain of governance.

The reason for this is not just the massive amount of empirical research showing that even for citizens who can be thought of as being within "the broad majority" this system does not work very well for the articulation of interests and the transformation of these interests to public policies. In addition, the very idea appears to be wrong from a theoretical perspective. The reason is that in all known democracies there are minority groups that know that they will never become the majority - no matter how many elections held. Contrary to what is often stated, there is simply no chance that they see the system as legitimate because of hopes to become the majority in a future election (Przeworski 1991, p 10-33). These minorities are forever outnumbered but still they do not rebel or take any other forms of illegitimate actions against their political system. Instead, in some cases they seem to thrive. To take a few examples, Finland has a Swedish speaking minority with a partly distinct culture making up about six percent of the population, most of whom live in the same geographical area of the country. According to a recent study, they show higher levels of trust in the political parties, are more content with how the government is doing its job, and are more satisfied with the overall quality of the Finnish democracy than the Finnish speaking majority (Bengtsson and Grönlund 2005). There are a number of German speaking minorities living in distinct areas in Europe, for example in Denmark, in Belgium, in France and in Italy who appear to be doing equally well (Wolff 2001). The same goes for the large Hungarian minorities living in Romania and in the Slovac Republic.[6] In addition, Germany has a Danish speaking minority of about twenty-thousand people that seems to be thriving.[7]

There are of course other minorities than those based on language/ethnicity that are in for the same difficulties. Scandinavian voters who would prefer to live in a British Labour - Tony Blair type of society with a level of public spending of around 40 percent of GDP instead of above 50 percent have no political alternative that they can vote for that would have a reasonable chance of becoming the majority. Citizens in the U.S. who would like to have a secular President who presents rational "enlightment style" arguments for his/her policies instead of referring to arcane religious beliefs seem to have no one that they can vote for in the upcoming presidential election. In a recent analysis based on survey data from 38 national election studies, Peter Esaiasson shows that there is surprisingly little that speaks for the

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[6] http://www.htmh.gov.hu/en/index.php
[7] There are certainly cases where things have turned out at to be more complicated (the Quebecois, the Catholics in Northern Ireland, the Basques).

hypothesis that those on the loosing side of a national election lessen their support for the political system. In fact, in many cases, losers become more supportive of the political system (Esaiassion 2007). This puts even further doubts on the "will of the people" theory of political legitimacy. It should also be noted that this casts doubts on the Schumperterian view of democratic legitimacy, in which the elections' main function is to create accountability, since minorities cannot hold any government accountable in majoritarian elections.

The point is that in a significant number of cases it appears as if electoral/representative democracy as a way of becoming part of the majority that forms public policy is not a necessary condition for creating political legitimacy. In the cases I know best (Denmark, Finland), there is very little that speaks for the idea that ethnic/linguistic minorities do not find the political system of their countries legitimate despite the fact that they can never hope to become a majority and thus decide the content of public policies.[8] The question is, then, what this feature of the political system is that creates political legitimacy beside or outside the electoral/representative chain. Obvious candidates are things like minority rights and the rule of law, but my argument is that these concepts do not go to the heart of the matter. In order to shed light on this, I will illustrate my argument with an empirical illustration from a recent case when legitimacy broke down, namely the outbreak of the civil war in former Yugoslavia.

The Counterpoint to Legitimacy – The Outbreak of Civil War

The complexity of political legitimacy as a concept means that it is very difficult to operationalize and measure it in empirical research. Surveys are often used, but when a person states that she does not have confidence in a political institution, this is not necessarily a good measure of lack of political legitimacy. The reasons for having low confidence in for example the Parliament may be a) a sign of the type of healthy skepticism against authorities that we often think is a democratic virtue, b) that you dislike the current majority but not necessarily the institution as such c) that you support the majority and the institution but are upset about some recent decision or scandal. Another way of studying legitimacy is to conduct detailed

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[8] I am here focusing on ethnic minorities. There are of course other types of minorities based on, for example, sexual orientation, social class and opinions. People who think that abortion is murder and should therefore not be allowed will in all likelihood always constitute a minority in the Nordic countries. What makes the minorities mentioned above interesting is that they also live in distinct parts of the country which should make "collective action" an easier task according to what Russell Hardin (1985) has labelled the logic of coordination.

historical case studies of what happens when this legitimacy breaks down. What should count as a breakdown is of course debatable, but I guess that most people would agree that when large groups of citizens take up guns and start killing each other (instead of debating and voting), this is a clear-cut behavioral indicator that something with the democratic system's political legitimacy has gone astray.[9] By studying the details of such cases, we may get at the very causal mechanism that can help explain what generates and what may destroy political legitimacy in a democracy. Especially when it comes to newly established democracies, recent empirical research has presented us with a fascinating puzzle, namely that they tend to generate a considerable amount of violence (Mann 2005). One would think that when citizens get the right to participate in "reasonably free and fair elections" and choose their representatives, who in due time will launch policies according to "the will of the people", things would go well. But this seems not to be the case. Instead, what you very often get are representatives that are "elected to fight" (Mansfield and Snyder 2005).

The civil war in former Yugoslavia is a case in point as it took place at a time when this part of the world moved from semi-communism to democracy. There are certainly numerous explanations for the outbreak of this civil war, ranging from those that point at ancient hatreds to the ambition of specific political leaders and of course the failures of the international community. The number of explanations is in fact overwhelming and it seems like for events of this scale we end up with one explanation for each scholar. Some of the explanations point to historical and cultural forces that in some way appear to have made the war inevitable. Other explanations are more events based and point to specific decisions (or mistakes/miscalculations) by specific political leaders. What I have done is to try to disentangle the sequence of events that led to the outbreak of violence. The idea is very simple and inspired by non-cooperative evolutionary game theory. In a situation like this, people react to recent actions by the other agents, and the way in which they will act (cooperate peacefully or defect/ take to violence), depends on what they think the others will do (Aumann and Dreze 2005). They base these decisions not on any type of perfect information (which is pretty hard to get in a case like this), but on whatever information that they can obtain. Moreover, they constantly "adjust their behavior based on what they think other agents are going to do, and these expectations are generated endogenously by information about what other agents have done in the past" (Young 1998, p. 29). A central

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[9] Or as one of my first teachers in political science, Torbjörn Vallinder, used to say: Democracy is a simple thing. You count the heads instead of chopping them off.

part of this theory is that behavior is disentangled from basic beliefs. Their behavior (e.g. to take to violence) evolves dynamically as they learn about what "the others" are doing, while their normative beliefs about the world (e.g. it is best to live in peace with your neighbors from other ethnic community) is fixed.

This is not the place to give a thorough background of this tragic conflict. What I want to underline is an argument put forward by Michael Ignatieff, namely that in many respects this conflict was unlikely to happen. First, because Tito's policy from the 1960s to replace the various national identities with a Yugoslav identity was not without success (Ignatieff 1993, p. 13). Secondly, especially when it comes to Serbs and Croats, Ignatieff underlines their similarities in language and habits and states that "these people were neighbours, friends and spouses, not inhabitants of different planets" (p. 15). There are several analyses of specific ethnically mixed villages/cases that substantiate this (Gagnon 2004; Oberschall 2000). Thirdly, Ignatieff argues convincingly that the conflict cannot be traced back to some kind of "uniquely Balkan viciousness". The type of "ethnic cleansing nationalism" and murderous practices that had taken place during the Second World War in the Balkans were all imports from Western Europe and if Western Europe could erase these habits, the same should have been possible in former Yugoslavia. As Ignatieff states:

> therefore, we are making excuses for ourselves when we dismiss the Balkans as a sub-rational zone of intractable fanaticism. And we are ending the search for explanation just when it should begin if we assert that local ethnic hatreds were so rooted in history that they were bound to explode into nationalist violence. On the contrary, these people had to be transformed from neighbors to enemies (Ignatieff 1993, p. 15f).

In sum, my interpretation of what happened is as follows. First, Slovenia decides to secede. This meets with some opposition in Belgrade, but since Slovenia only has a small population of Serbs, very little fighting takes place before Slovenia is de facto acknowledged as an independent state. When Croatia wants to go the same way, a major problem is of course that within its borders there is a fairly large Serbian minority (about 11 percent), of which a considerable number live in a specific part of the new country – the Krajina province. The Serbian minority of course became worried about what would happen to them in the new

state, especially as the first elections resulted in a Parliament where a nationalist Croat party led by Franjo Tudjman received the majority of the seats. However, in the beginning of this process, the Serb leaders within Croatia had pretty modest political demands and had no intention of taking the Serb minority out of the new Croat Republic (Mann 2005). In a speech in front of 10,000 Serbs delivered in June 1990, the then most important Serb leader in Croatia, Jovan Rašković, stated that:

> the Serbs respect the Croatian people's right to their sovereign state, but they (the Serbs) demand in that state an equal position for the Serbian and other peoples. The Serbs do not want a second state in Croatia, but they demand autonomy... The Serbian people in Croatia should be allowed to speak their language, to write their scripts, to have their schools (cheers), to have their education programs, their publishing houses, and their newspapers (cited in Silber and Little 1997, p. 95)

This is very much like the rights that many other ethnic/linguistic minorities in Europe have, as for example the Danish speaking in Germany and the Swedish speaking in Finland. This indicates that initially for the Serbian minority leaders it was really not a problem to become citizens in a new state in which they knew that they would forever be a minority. The "will of the people" theory of electoral/representative democracy was not seen as a problem for them in accepting the new Croatian state as legitimate. However, the newly elected nationalist Tudjman regime did not accept this invitation for moderation and compromise from the moderate Serb leaders in their new country. Instead, they did five things that served to ignite the conflict and led to the outburst of violence in Krajina that then spread to other parts of former Yugoslavia.

First, the Tudjman regime deliberately leaked information given by the moderate Serb leaders about their willingness to compromise and their negative opinion about the more radical fractions in the Serb community. This served to delegitimize the moderate Serb leaders in the eyes of their own community and served to strengthen the support of more militant Serb leaders in Krajina whose aim "was not to secure for the Serbs autonomy inside Croatia, but to take the Serbs, and the land on which they lived, out of Croatia altogether" (Silber and Little 1997, p 97). Secondly, in the constitution for the new Croatian state, the Tudjman government put in formulations that made it clear to the Serb community that from now on they would be

second rate citizens in their country. The demand from the moderate Serb leaders for the Serbs in the new Croatian state to be defined as a constituent nation on an equal footing with the Croats was denied. In ignoring this demand, the Tudjman regime in the new constitution stated that the new state was to be a state for the Croatian People and that all other "nations" were to be reduced to national minorities. This was an important change, since in the Yugoslavian Federation, the Serbs in Croatia had been a "constituent nation of the Republic of Croatia" (Silber and Little 1997, p. 97.) According to Silber and Little, this "was a hammer-blow to Rašković. It strengthened the hand of Serb nationalists much more radical than he: those who wanted territorial autonomy, and finally, secession from Croatia" (p. 97).

Thirdly, the Tudjman regime began to fire citizens in their new country from various government jobs simply because they were Serbs (Oberschall 2000). This took part in the country as a whole but also in the Krajina province where ethnic Serbs dominated (Silber and Little 1997; Woodard 1995, p 107). As two observers write: "massive layoffs of Serbs took place almost immediately after Tudjman's election, striking Serbs in the police, army, the judiciary and the educational institutions"(Udovički and Torov 1997, p. 94).
Fourthly, non-Croats were differentiated from Croats in yet another way:

> an official document called a Domovnica (a form providing proof of Croatian origin) was instituted and became an instrument of differentiation between Croats and non-Croats when it came to jobs and privileges. Opening a private business, obtaining medical coverage and the right to retirement pay, getting a passport or a driver's license, even in some cases being qualified to make withdrawals from one's own savings accounts - all these things hinged on the possession of a Domovnica (Udovički and Torov 1997, p. 95).

Lastly, there are statements that from very early on (summer of 1989), the police forces of the new Croatian regime failed to protect the security of Serb minorities "from vicious outbursts of anti-Serb terror in some mixed communities" (Woodard 1995, p. 107). It is noteworthy that this took place before the above statements were given by the moderate Serb leaders.

The events between Croats and Serbs in Croatia then led to violent conflict over the control of the police forces in Krajina and this made it possible for radical (secessionist) political

entrepreneurs in the Serb community to rise to power, mobilize support for their cause in Belgrade, outmaneuver the more moderate Serb leaders and receive military support from the Serb-dominated National Yugoslav Army (Bennett 1995; Oberschall 2000; Silber and Little 1997; Udovički and Torov 1997).[10] It is noteworthy that the Milosevic regime in Belgrade did not publicly recognize or support the self-declared "Serb Autonomous Province of Krajina" until later and after the first (two) causalities had occurred in a clash between Croatian police forces and the Krajina-Serb militia over the control of a local post office (Silber and Little 1997, p.137). This implies that the Serb leaders in Belgrade did not protest or take action against a situation in which the Serbs in Croatia would become a minority. They took action after the Tudjman regime had made it clear that the Serb minority in Croatia would be constantly discriminated against, which in its turn mobilized the radical-nationalist Serbs in the Krajina province and led to the outbreak of violence.

Needless to say, I do not claim to have intimate or expert knowledge about the outburst of this tragic conflict (and as can be seen, I have to rely on secondary sources since I cannot read the Serbo-Croatian language). Furthermore, it is not unlikely that I have missed something of importance. And again, this is just one illustrative case. Nevertheless, if this story is empirically valid, it has important theoretical implications for how we can understand what creates and destroys political legitimacy in a democracy. The main message from this story is that political legitimacy is much more dependent on the "output" side of the political system than on the input side. In fact, the input "will of the people" side of the political system seems rather unimportant. As with many other similar minorities, the initial strategy of the Serbs in Croatia appears to have been to accept to become a permanent minority in the new state if they were given some form of "cultural autonomy" in their region and if their basic rights not to be discriminated against were respected. It was not until this option was rejected through the actions of the Tudjman government that the Serbs in Croatia changed strategy from moderation to confrontation.[11] This would explain why the confrontational Serb leaders in

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[10] This interpretation of the history of the outbreak of the war should not be taken as an excuse for the many horrible war crimes that the Serbian military and para-military forces committed during the war that was to follow these events. However, what the Tudjman regime initially did was to give the nationalist hate mongers among the Serbs all the arguments that they needed.

[11] It is of course not at all certain that the initial moderate strategy of the Serb leaders would have had a chance to become successful. Even if the Tudjman regime would have played along, using their propaganda machine, the Milosevic regime in Belgrade may have been able to persuade the Serb minority in Croatia to abandon the moderate strategy, not least as the Croatians did not have a very good "history of play" from the Second World War. However, we can never know this since the confrontational actions by the Tudjman regime against the moderate Serbs effectively prevented a peaceful resolution to the crisis and made the following confrontational propaganda from Belgrade look credible in the eyes of many Serbs.

Croatia could persuade the Serb community that their Croatian neighbors, friends (and in some cases it appears even spouses) were out to harm them.

My argument is not that it is "weak" state capacity that causes civil war (cf. Migdal 1988). The argument is that a state that systematically departs from the ideal of "impartiality" in the process of implementation will be seen as illegitimate and therefore, under certain circumstances, may give rise to these types of conflicts. Logically, it is more plausible that a "strong" state can implement systematic discrimination against ethnic or racial minorities. If we think of this in a causal mechanism approach, the argument that legitimacy has much more to do with the *exercise* of government power than the *access* to this power by participating in elections makes a lot of sense. Whether you as a citizen are denied the right to vote or whether your vote ends up as part of the majority that decides on policy, this will not have any significant impact on you. Many citizens voluntarily abstain from voting and from participating in other forms of political activity on the "input" side of the political system, and the chances that your vote will be decisive is of course miniscule. However, if the police would not protect you because you are an X-type of citizen; if the fire-brigade would not come to your house because you are a Z-type citizen; if your children would be systematically discriminated against in the schools because they are Y-type children; and if the doctors at the hospitals would ignore you because you are a P-type person, then you are in real trouble. To be blunt, while what happens on the input side is usually harmless for the individual citizen, what the state does on the output side may be life-threatening. It should be added that as this was a former "semi-communist" state, not only the police and the fire-brigade but most social services and insurances, health care, and education were run by government officials (as is the case in most European welfare states). This of course increases the importance of how citizens are treated on the "output side". In sum, what this intends to show is that living as an ethnic/linguistic minority when you are reasonably well protected against discrimination by government authorities and have "cultural autonomy" means that the political system has good chances of achieving legitimacy. However, living in a situation like the one described above is much more difficult since what the state does at the output side affects you in a more direct way (cf. Kumlin 2004). If this analysis is correct, then this is where the battle of broad based political legitimacy is won or lost.

As stated above, this is just one case.[12] However, in a recent comparative statistical analysis, Melander and Öberg show that the occurrence of civil wars is not positively related to democracy, but to bureaucratic quality. According to their findings, there is a large number of analyses showing that the relation between democracy and civil war type conflicts is u-shaped, meaning that such conflicts are most common in what they label "quasi-democracies".[13] Using data about "bureaucratic quality" from 141 countries during the years 1984-2004,[14] and controlling for a number of other variables (poverty, lack of economic development, time since previous conflicts, ethnic dominance and political instability, they find that bureaucratic quality is "extremely significant" for explaining civil wars (Öberg and Melander 2005). However, their discussion about the causal mechanism between bureaucratic quality and civil war is very different from the one presented in this analysis because it is not geared towards the lack of impartiality and discrimination. Instead they argue that bureaucratic quality increases the state's ability to obtain good intelligence about potential rebels as well as advancing the government's capabilities to distribute resources "that each actor prefers to rebellion" and to be effective in the implementation process (p. 9).

Impartiality as the basic norm for the exercise of legitimate power

If Robert Dahl is correct that "political equality" is the basic legitimate norm for the principles that should guide the access to power in a democracy, what would then be the equivalent for the exercise of legitimate power. In another paper written together with Jan Teorell, we have argued that this should be *impartiality* (Rothstein and Teorell 2008). Our definition of impartiality in the exercise of public power is the following: When implementing laws and policies, government officials shall not take anything into consideration about the citizen/case

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[12] Recent historical research show that one can give the same type of explanation for the outbreak of the Spanish Civil war in 1936. According to Stanley G. Payne, the newly elected left government used the state to make lots of arbitrary political arrests of members of rightist parties, gave impunity for criminal action for members of the Popular Front parties, politicized the legal system in order to facilitate political arrests, accepted violation of property rights "en masse" etc. "by refusing to enforce the law equally and by intensifying its policy of harassment of the right, the time would come when many moderate conservatives would be willing to ally themselves with the radical right" Payne, Stanley G. 2006. *The Collapse of the Spanish Republic 1933-1936. Origins of the Civil War*. New Haven: Yale University Press.

[13] An exception is a well-known study by James Fearon and David Laitin, but according to Melander and Öberg this is because they include wars of colonial independence, which implies that a number of Western European countries are coded as having civil wars during the 1950s and 1960s.

[14] Their data on bureaucratic quality is from the International Country Risk Guide, see: www.prsgroup.com/ICRG.aspx.

that is not beforehand stipulated in the policy or the law (cf. Strömberg 2000).[15] As Cupit writes: "To act impartially is to be unmoved by certain sorts of considerations — such as special relationships and personal preferences. It is to treat people alike irrespective of personal relationships and personal likes and dislikes" (2000). Impartiality is of course central to the "rule of law" idea, but the norm has a much broader reach because it also applies to other spheres of state action than those directly governed by law. When public policy is to be enacted in so-called "human processing" areas, such as for example education, health care, welfare benefits, and active labor-market programs, widely discretionary powers usually need to be transferred to lower-level government officials responsible for implementing policy. Impartial, non-discriminatory behavior on behalf of these policy enactments is of course a key virtue according to this theory. But it falls outside the sphere of government activity regulated by the rule of law. In other words, the impartiality principle not only entails but in addition *encompasses* the rule of law (Rothstein and Teorell 2008)

Another case in point that also relates to participation in violent state-led conflicts and legitimacy is Margaret Levi's analysis of compliance to the demand for military service in Canada during the First World War. The data she presents clearly shows that French-Canadians in large numbers refused to volunteer for the war. Moreover, the Quebec community at large strongly opposed conscription (Levi 1998). From a "will of the people" idea of political legitimacy, this is difficult to explain because the francophone Canadian soldiers would go to war to defend France on French soil and thus be "saving the homeland". One answer to this puzzle from Levi's analysis is that this had to do with the perception among most French Canadians that the Anglo-dominated government and likewise the Anglo-dominated army would not behave against them in an *impartial* way. Although there was no official discrimination against French Canadians in the military, "francophone servicemen felt and were often made to feel uncomfortable" (Levi 1998, p. 149). One possible interpretation is that many French-Canadian young men may have thought that if they were to serve in army units led by Anglophones, they would be discriminated against or simply used as "cannon fodder". It is thus reasonable to conclude that while most young male French Canadians

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[15] It should be stressed that this definition does not imply that no other concerns than those beforehand stipulated by law should be taken into consideration when settling a case. Time or budget constraints would for example be perfectly legitimate concerns, even though they are rarely mentioned by laws or specific policies. Rather, what this definition implies is that no other characteristic of the *citizen* or the *case* to be dealt with – other than those stipulated in the policy or law – should be taken into consideration.

thought the war effort as such was legitimate, they feared the lack of *impartial treatment* within the army.

 What this analysis also shows is that the common idea of the "rule of law" and the protection of "human rights" as legitimacy enhancing is too simple and limited. Especially modern welfare states use several other models for creating legitimacy by impartiality in its exercise of public policies (Rothstein and Teorell 2008). Universal style welfare states are in this respect especially interesting since they are supposed to carry out a large number of services that must be considered extremely important for the individual's well-being. In addition to the social insurance system, they are also responsible for health care, schooling, elderly care, day-care and preschools to name but a few things. In these services, the rule of law type of legitimacy seems to play a very subordinate role. This implies that encompassing welfare states are in need of popular political support in order to uphold the high level of taxation and so legitimacy is precarious. When it comes to legitimacy, a state that simply carries out "law and order" and protects property rights has an easier task than a state that is supposed to take care of all the things that a universal welfare state sets out do to. If we are interested in how political legitimacy can be produced, these states should therefore be good cases to study.

Creating Political Legitimacy in the Developed Welfare State: The Five Basic Models

In his analysis of legitimacy, Max Weber stressed the importance of analyzing the state as a *form of administration* (Barker 1980, p. 5). Weber's analytical focus was, in the first instance, on the *legitimacy* of the non-democratic Germany of his time (Beetham 1985). In contrast with many other social theorists, Weber viewed political legitimacy as depending not merely on the political system's input side, i.e. on whether or not citizens democratically determine policy (Barker 1980). For Weber, the output side - the implementation of policy by bureaucrats - was at least as important, for it was this side of the state with which citizens came into direct contact, and on which they were dependent. Weber believed, for example, that the state's legitimacy was more dependent on tax-collectors' relations with citizens than on whether or not suffrage was universal.

Administration and Legitimacy

In most modern welfare states, citizens today are born, grow up, and die under the aegis of the state. Robert Dahl's type of democratic theory views public undertakings in such areas as legitimate so long as the decisions establishing them are taken in a procedurally correct manner. It is the democratic decision-making process - in which all citizens possess the same formal rights to influence opinion, to nominate candidates, to run for office, and to vote - that endows public decisions with legitimacy. However, even the decisions of parliamentary organs seem to have a limit for how legitimate they are perceived in the eyes of citizens - *such organs can only make a very small number of the decisions affecting citizens' welfare made in the modern welfare state.* The reason for this lies in the institutional limitations of the democratic decision-making process. Firstly, many such decisions involve particular cases and special situations. They may concern the distribution of child-care places, the placement of patients in the queue for medical operations, support for industries located in sparsely populated parts of the country, or the compulsory care of drug-abusers. Public authorities in such areas must also make decisions *continually* - doing so is part of the day's work for a teacher in a classroom, for instance, or a doctor at an emergency ward. The scope for democratic control over decisions of this kind is very slight, however, for such decisions require a specific knowledge of each case. The need for *situational adjustment,* in other words, is so great in many situations as to render impossible any centralized, uniform decision-making process (Friedman 1981).This means that many decisions - often of critical importance for individual citizens and groups - will always lack democratic legitimacy, for the simple reason that no democratically chosen assembly can have any decisive influence over them.

These two factors - the need for situational adjustment and the scarcity of time - have the consequence that, in many important questions, parliamentary assemblies must transfer their right of decision to other organs (usually the public administration) (Smith 2003). Such decisions remain political, however, in the sense that they directly determine the distribution of values in society. The modern welfare state is distinguished, moreover, by an ambition to intervene in a great many social areas, not least in areas in which the need for situational adjustment and for continual decision-making is great (health care, child-minding, environmental protection, industrial policy, etc.). As Kathi Friedman has stressed:

social rights, unlike civil and political rights, require complex

programs, policies, procedures of implementation, coordination,

eligibility criteria, and so forth to be usable to the citizen (Friedman

1981, p. 5).

The "rule of law" view of the public administration – i.e. being a simple executor of parliamentary decisions - is therefore gravely misleading (Feldman 2003). The process of administration and implementation should instead be seen as *the direct continuation of politics,* albeit in another arena and under different conditions. Many analyses of the legitimacy problems in the public administration treat it as a single unit - as a more or less homogeneous and uniform organization. This is a serious mistake however. Within what is called public administration, a range of organizational forms and administrative principles may be found. The purpose of this paper is to set forth the hypothesis that the need for legitimacy - for the acceptance by citizens of decisions as just - is an important explanation for the genesis of different administrative forms in the modern welfare state. The five models (all of which I analyze from a legitimacy perspective) are as follow:

The legal-bureaucratic model

The professional model

The corporatist model

The pseudo-market model

The lottery-based model

The Legal-Bureaucratic Model

The word "bureaucracy" carries, in daily language, mainly negative connotations. For Weber, however, the term was not solely negatively charged; he also saw bureaucracy as a special organizational form capable of conferring legitimacy on the political system (Beetham 1985). Weber considered bureaucracy's foremost characteristic to be the impartial application of *centrally determined, precise and standardized rules.* In this type of administration, disinterested, impartial officials apply precise rules on an objective and factual basis. According to Weber, an administrative form based on precise rules could achieve legitimacy because of the protection against administrative arbitrariness that such rules afford. If they are

to produce such beneficial effects, however, the rules must first of all be *general,* i.e. formulated so as to treat like cases in a like manner. In addition, the rules must be specified with sufficient *precision* so as to make it possible to *predict* the actions of the state. The citizens of a bureaucratic state can therefore *calculate* - on the basis of their knowledge of the rules - what the effects of their relations with the state will be. Indeed, bureaucracy's central basis of legitimacy is precisely its *calculability* (Offe 1986, ch. 10), which in turn rests on impartiality as the basic norm for the implementation of the rules/laws.

Weber deemed it advantageous, although not necessary, that citizens view laws and rules as having been adopted in an acceptable manner, e.g. through the decisions of a democratically elected parliament (Beetham 1985, p. 255f). The critical thing, however, is that citizens can foresee the effects that such rules produce. This requires that the rules have a certain persistence, i.e. that they not be changed abruptly or used *solely* as an instrument for achieving politically determined social change. Claus Offe has underlined that:

> as soon as legal norms become disposable from the standpoint of
> their suitability for concrete tasks, they lose their capacity to
> legitimate the choice and fulfillment of these tasks on the basis of
> any substantive validity. For example, in the well-known situation
> where educational, tax or pension laws are continuously revised, it
> is not only the Weberian predictability and calculability of
> bureaucratic action for all members that is lost. In addition, the
> administration robs itself of legal legitimacy for the content of the
> revision it itself initiates (Offe 1986, p. 308f).

Weber also stressed a further prerequisite to a bureaucracy's proper functioning: that the bureaucrats themselves possess a fitting character. Bureaucrats must respect the validity of the laws, and may not use them for other purposes than those intended by the legislators. They must possess the virtues of impartiality, incorruptibility and neutrality (Katz and Danet 1973). Weber's Latin motto for this was "sine ira et studio" - roughly, working without personal ambition or hope for gain. Officials must stay impartial, and may strive only for procedural correctness - to follow the rules and laws as they are laid down (Beetham 1985).
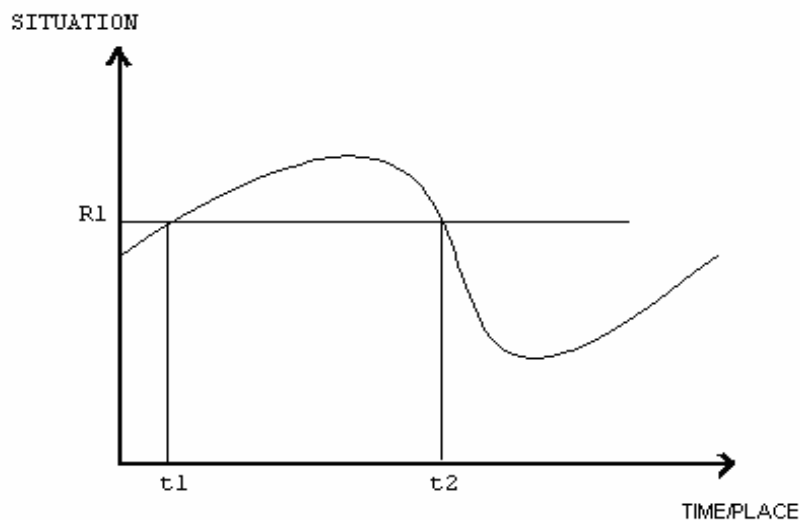
Bureaucracy's Achilles' Heel: The Need for Flexibility

The limitations of the bureaucratic "rule of law" model are based in the difficulty of framing rules in a sufficiently precise manner (Feldman 2003). Aristotle himself noted that written laws cannot be applied in all situations, since legislators, "being unable to define for all cases,...are obliged to make universal statements, which are not applicable to all but only to most cases." Aristotle concluded therefore that "equity is justice that goes beyond the written law" (Aristotle cited in Brand 1988). Parliament can easily pass a law, for instance, declaring that all children between 7 and 16 years of age have the right to attend school. However, certain pupils need more instructions than others, for example students with disabilities. This poses a problem in that each mentally or physically "challenged" student's case is in principle unique; there is accordingly no way to specify in law *how much* extra attention and resources such a student should be entitled to. Decisions of this kind must instead be made on a case by case basis. Mark Jacobs has called attention to how, in the case of the USA, the imprecision of the laws applied in this area has the effect of undermining the political system's legitimacy, for the reality is that the rules leave those seeking assistance at the mercy of administrative officials. Jacobs claims that the right to assistance proclaimed in the law is therefore illusory (Jacobs 1986). Another such example may be seen in the case of state intervention to remove abused children from the custody of their parents. It is exceedingly difficult to establish precise criteria in advance for when to intervene in such cases. Children must certainly be protected from maltreatment and neglect, yet separating children from their parents is a severe intrusion on the part of the state into the lives of citizens. Specifying criteria in such cases as these is terribly difficult. Claus Offe, accordingly, has claimed that:

> Welfare-state steering tasks are distinctive above in that they have to be resolved in a (temporal, substantive and socially) *ad hoc* manner and, thereby, escape generalized jurisdictional rules, schematized competences and instructions. These must, instead, be discovered with respect to consideration of the particularities of the case and on the basis of expert knowledge (Offe 1986, p. 306).

As a matter of fact, one can enumerate a great many cases in which the need for situational adjustment - for individual treatment in each case - renders impossible the use of precise "rule of law" types of rules on which the legitimacy of the legal-bureaucratic model is based (Brand 1988; Friedman 1981). What distinguishes such cases is that they all involve an attempt on the state's part to intervene in areas which are dynamic, i.e. in cases which vary from each other and, furthermore, change over time. This problem - one of the main problems facing all organizational directions - can be described graphically.

Figure 1. Administration by Rules under Dynamic Conditions

The curve in Figure 1 represents a dynamic process which the state wishes to regulate. The horizontal line symbolizes a precise "rule of law" type of rule, i.e. one specifying that, under condition R1, a measure specified in the law shall be performed by the state. The problem may be illustrated by comparing points t1 and t2. If the bureaucrat decides on the basis of the rule, then the very same measure will be taken at both t1 and t2, since the prevailing conditions are exactly the same. If we view the situation *in its context,* however, it is clear that

the circumstances at t1 and t2 are actually fundamentally different (the curve veers sharply upward in the former case, sharply downward in the latter). This means that, if the same measure is taken in both cases, *it will be altogether inappropriate in one of them*. If such an outcome is to be avoided, the actions taken must be *situationally adjusted* - something the legal-bureaucratic rule of law model has great difficulty doing (Mayntz 1983). Examples that can illustrate this are for example what a social worker should do when handling a case of child neglect. The rule may say that when this neglect has come to a certain point, the child should be taken into custody. However, at t1 things in the family are improving and taking the child into custody may do much more harm than good. In t2, the family situation is sharply deteriorating and leaving the child with the family could cause serious and maybe irrevocable harm. Max Weber was well aware of this problem. Bureaucracy was, he claimed, rational *in form,* but this did not mean that it was also always rational *for the pursuit of ends.* The legal-bureaucratic administration of a program may be judged successful to the extent that it follows the lines laid down in the formal rules. Whether this also entails achieving the goals of the program is an open question. The success of the program depends on whether the rules are framed in a manner corresponding to the nature of the object towards which the program is directed (Feldman 2003).

Seen from the standpoint of the "will of the people" type of democratic theory, this gap between form- and goal-rationality is the central problem of the politics of administration (Smith 2003). If legislatures were capable of framing rules of such precision so as to specify how administrative agencies should act in every situation, then of course bureaucrats would exercise no political influence. And indeed, the rule of law/legal-bureaucratic model usually enjoys considerable legitimacy in areas in which the state authorities are able to effectively specify criteria for administrative action. The basic idea of representative democracy - that parliamentary organs should exercise the decisive political power - builds implicitly on the idea that such organs can design laws with sufficient precision. Yet in many areas it is impossible, for the above-mentioned logistical reasons, to direct governmental activities on the basis of precise rules. If an attempt is made to apply precise rules within areas characterized by rapid changes or greatly variable cases, absurd consequences easily follow, as the abundant literature portraying the individual's encounter with a rigid and uncomprehending bureaucracy illustrates. The advantage of the bureaucratic model lies, in sum, in its predictability, while its major drawback is its rigidity. These characteristics are, however, but two sides of the same coin, for precision and predictability always entail

inflexibility. The demand that administrators be flexible - that they adjust their actions to changing circumstances and varying cases - can only be satisfied if they exercise influence over policy. Flexible administration presupposes that administrators enjoy a certain *room for maneuver,* i.e. an area of authority and decision-making outside parliamentary control (Smith 2003). The administrative models to which I now turn all represent attempts to solve this problem; they are all designed to ensure that administrative measures are regarded as legitimate, even when they are not exhaustively prescribed beforehand in rules drawn up by parliamentary organs.

The Professional Model

A professional administration differs from a bureaucratic one in being staffed largely by a professional corps. Such a corps is distinguished by its possession of the kind of <u>specialized evidence-based knowledge</u> needed for running a particular program. While laws may be important, they play a secondary role in place of evidence-based knowledge (Bertilsson 1990). A classic example is of course the medical profession in a public health care system. The legitimacy of the health service is not based on it being operated in accordance with precise "rule of law" like rules framed by ever so democratically chosen bodies. Its legitimacy rests rather on the notion that it is operated on the basis of *evidence based knowledge that is implemented in an impartial way.* The professional corps develops this expertise autonomously, and its members apply it in specific cases according to their individual judgments, and with their own responsibility (Beckman 1990). The Swedish health care law, for example, prescribes that doctors base their decisions for treatment "on scientific grounds or on tested experience," not on the basis of a codified system of laws passed by a democratic assembly (a fact for which we may be grateful!). Physicians who violate these norms may be held responsible for the consequences.

It is the skill in the application of evidence-based knowledge and not the interpretation of universal rules that is the basis for the legitimacy of the professional model of administration. Those staffing such an administration, however, need to be regarded as possessing genuine expertise, or their exercise of authority will not be considered legitimate. Their expertise must, in other words, pass certain tests. First, it must be recognized by the state - indeed, this is the necessary foundation for any professional autonomy at all in the implementation of

public policy. The state bestows such recognition when, for example, it confers the right to practice on certified members of the profession. Secondly, the general public must have confidence in the expertise possessed by the corps. Thirdly, the expertise must be applicable, i.e. the field in question must have developed a body of generally accepted knowledge capable of giving detailed guidance to practitioners in the treatment of individual cases (Bertilsson 1999). The authority of a professional corps is founded on the fact that its members monopolize knowledge of such a type that "non-professional followers" cannot "check its specificity and boundaries." Professional authority is, as Beckman has so pungently put it, "the only type of authority that relies wholly on the personal incompetence of its followers" (Beckman 1990, p. 127f).

There is a specific type of impartiality connected to professional legitimacy. It is not the dry, impersonal "sine ira et studio" rule of law type of impartiality that characterizes the bureaucratic legal model, because professionals are usually strongly committed to the program that they are supposed to carry out, be it fighting poverty, preserving the environment or learning small children to read. A case in point would be teachers in the Scandinavian public or semi-public pre-school system. These are highly trained professionals who certainly do not think of their work as being impartial towards the children. Instead, they are supposed to be very engaged in the personal development of their preschoolers and also "customize" their attention to each child according to his or her specific needs. They are at least to some extent driven more by what feminist scholars have labeled a "logic of care" than a "logic of justice" However, there would be a public outrage if parents would find out that teachers had deliberately given more attention to certain children whose parents had paid them on the side, or children that belonged to a certain ethnic group, or religion, etc.

In sum, by relying on the guidance provided by professional experts, rather than that given by precise rules, public programs can acquire legitimacy even in areas featuring a great need for situational adjustment. This presumes, however, a relatively far-reaching correspondence between the intentions of legislators and the interests of professionals. It furthermore requires that the body of knowledge possessed by the professionals be of the right sort - generally accepted, on the one hand, and capable of guiding the treatment of individual cases, on the other. Thirdly, this model of legitimacy requires professional corpses possessing a reasonably high ethical standard to assure the public that impartiality (and not corruption or

discrimination) will be the guiding principle in the implementation process (Rothstein and Teorell 2008).

The Corporatist Model

How can political legitimacy be created if there is a strong need for situational adjustment but no acceptable professional knowledge or corps that can fill this need. In Northern Europe, one widely used solution has been the corporatist administration model. In this model, legitimacy is produced by giving representatives of the groups directly affected by the policy in question influence over the implementation process (Andersen 1988; Cawson 1986; Streeck and Crouch 2006). The model assumes that such representatives are chosen by the groups in a way that makes them legitimate in the eyes of their constituents. A further assumption is that policy implementation is often successful only when the group towards which the policy is directed cooperates willingly. One way to elicit the group's collaboration is to grant the organization representing it an exclusive right to participate in the policy's execution (Öberg 2002). One of the reasons for allowing such organizational representatives to participate in administration is precisely that they:

> are closer to the target group (their members) than state bureaucracies, and they have more intimate knowledge of its situation and concerns. It is likely that this enables them to apply rules less formalistically and to take the specific conditions of individual cases better into account - which, in turn, tends to increase the acceptance of regulation by those affected by it (Streeck and Schmitter 1985, p. 24).

For the model to function, the group in question must be organized. This is not always the case. It is furthermore usually necessary that the group be represented by a single organization, and not by a set of competing organizations. If the latter situation pertains, it is difficult for the state to find persons representative of the entire group towards which the policy is directed.

It may be argued that, in addition to its suitability for legitimizing decisions, the corporative administrative form boasts a further advantage. The state leadership has often sought to organize - especially in areas such as the labor market and industrial policy - administrative decision-making in such a manner as to create an arena for negotiation and compromise between different interests. The state may find such an arena of compromise useful when, for example, it intervenes in such areas as work safety, labor market policy and industrial development (King and Rothstein 1993; King and Rothstein 1994). Policy implementation in such areas requires a high degree of flexibility and situational adjustment, so it is not possible to use the legal-bureaucratic model and it is difficult to find a professional corps that can fill the needs for flexible implementation (Brand 1988). Furthermore, such areas are often characterized by sharp conflicts between opposing interests, for example between employers and wage-earners. By granting equal representation on administrative bodies to both sides of industry, state leaders hope to encourage decisions that are marked by compromise rather than legal confrontation (Kelman 1981). Impartiality is thus produced by giving "equal representation" to organizations with conflicting interests (Rothstein 1992b). This means however that, in the corporative model, the distinction between politics and administration is virtually erased. Scholars in legal sociology and law have noted that this fusion produces a new legal form, which they have termed "reflexive law." Such law does not govern the disposition of material things, but rather "regulates the areas of competence of different societal systems, their organizational and institutional structures, and their forms for decision-making" (Teubner 1993).

By creating institutions in which organized interest groups are forced to negotiate and compromise with each other, state leaders may achieve goals that otherwise are very hard to come by. "A state that withdraws, in selected areas, from direct to procedural control does not become a weak state; in terms of the effectiveness of its policies, it may in fact gain strength" (Streeck and Schmitter 1985). The state governs *indirectly,* by choosing (a) which interest organizations are represented in the agency in question, (b) which questions these organizations shall jointly settle, and (c) what resources shall be made available to the administrative body in question.

> It is true that an associative social order implies a devolution of
> state functions to interest intermediaries. But this has to be
> accompanied by a simultaneous acquisition by the state of a

> capacity to design, monitor and keep in check the new self-regulating system's 'procedural control' (Streeck and Schmitter 1985, p. 26)

Let me illustrate how such a system can be established and its consequences with yet another case. From 1902, local employment offices were set up in which representatives from the local unions and the employers' organizations party were given an equal number of seats on the boards of directors. An impartial higher ranking municipal official or a judge from the local court was appointed as chairman of these local boards. This may today appear to be a rather simple measure, but, at the time, power over the employment offices was a highly politically charged arena by reason of the frequent and often very intense local industrial conflicts. The party that had control over the distribution of work naturally had the upper hand in that regard – unions could exploit the power to block the employers and the employers could, if they controlled the employment offices, recruit "willing workers" and blacklist strike leaders from employment in general. In Germany and many other countries (including Denmark and Norway), control over the employment office system had become an issue fraught with conflict between unions and employers, but the matter played out in a completely different way in Sweden (Schiller 1967, p- 9-36).

 When the City council of Stockholm studied whether it should establish public employment offices in the late 1890s, those involved immediately noted the negative experiences from Germany, where employment offices had become a weapon in the class struggle. It is difficult to discover the source of the notion that this knotty issue should be taken away from the opposing interests and be turned into a public concern, but it gained rapid acceptance in Sweden. By 1907, all larger cities in the country had set up bipartisan public employment offices. These municipal employment offices were established according to a uniform design throughout the country, which was based on the principle that they should be impartial and remain neutral towards any industrial conflict between the parties.

Starting in 1907, state subsidies were paid to the employment offices provided that they were organized as noted above. Interesting in this context is that leading representatives of both the social democrats and the employers' federation (SAF) were initially skeptical about these establishments. SAF had far-reaching plans to introduce the system that prevailed in much of

Germany, where the employers had taken control over the employment offices and used them as a very effective instrument against the unions (Schiller 1967, p. 9–36). The Social Democratic leader Hjalmar Branting spoke out in the Riksdag in 1903 against the bill to support the system with state subsidies because he felt there was a risk that the employment offices would be exploited by the management to recruit strikebreakers and so weaken the unions. A couple of years later their fears had been allayed and local representatives of both parties took part in several employment office conferences organized by the National Board of Trade, starting in 1906.

There is reason to ponder the temporal logic of this development, as it began before all adult males were enfranchised in 1909 and many years before parliamentary democracy was secured in 1917. Representatives of employers and unions had thus, prior to that point, begun continually to cooperate on an issue that was sensitive to both parties, both at the national level and, especially, at the local level. Particularly surprising is that this cooperation, as far as can be judged, appears to have proceeded in a relatively frictionless manner. There are no reports of any local antagonisms, and the five contemporary reports of proceedings from various employment offices that I have reviewed (Uppsala, Stockholm, Malmö, Göteborg, and Helsingborg) contained no notes indicating conflicts about anything other than trivialities.

 At the behest of the cabinet offices, the National Board of Social Affairs conducted a study of the employment office system and issued the resulting report in 1916. The report stated that "there have been no objections from any direction to the organizational principles upon which public employment offices are based." The Board of Health and Welfare also stated that the strong development of the employment offices was the outcome of the corporative principle of organization and the trust accorded to the system by both the management and labor organizations "which in our country have fortunately refrained from using job referrals as a weapon in the social struggle, which in Germany has to a degree distorted the entire issue of employment offices" (cit. in Rothstein 1992a, p. 94). The basic principle for the operation of the labor exchanges was that they should be impartial (neutral) in industrial conflicts and that they should give equal consideration to the interests of workers seeking work and employers seeking workers. The report continued:

> Despite the sharp social and political antagonisms that in other areas of
> society could make themselves felt between members of the management

and labor camps, the same individuals on employment office boards
have, in the experience of the National Board of Health and Welfare,
always loyally cooperated in the interests of objectivity (cit. in Rothstein
1992a, p. 94).

There is reason to linger a moment over this assessment. What the report stated was that "the same individuals" who outside the public institutions could be involved in serious conflicts, changed their behavior when asked to act within the frameworks of those corporatist institutions. Their sometimes intense and doubtless bitter struggles over interests were *transformed* by the institutional conditions into cooperation based on the principles of impartiality and mutual advantage. To some extent, this dovetails nicely with Elinor Ostrom's findings about how local actors who are competing over local natural resources can manage the difficult social dilemma of conservation of such resources. The institutional conditions proved capable of reshaping the actions of the actors from the point where they considered only their own short-term economic interests to that where they began discussing how they could work together to find cooperative solutions [Ostrom, 1990 #79, p. 138].

The Pseudo-Market Model

There are cases when none of the above-mentioned models work for creating legitimacy. Neither precise and universal laws, nor professional corps and nor interest group representatives can be "produced" to create the level or amount of legitimacy deemed necessary. The problem of adapting the operations of public programs to individual cases brings us to one of the fairly well-researched questions within implementation research, namely the problem of "street-level bureaucracy." According to this theory, the character of measures taken within dynamically interventionist areas is, in actual fact, decided by the operative field personnel. This is because it is impossible, on account of the factors of uncertainty mentioned above, for central political organs to prescribe in detail all of the disparate measures which must be taken in each of the various cases to be handled. Accordingly, the operative staff that work face-to-face with the clients - teachers, health staff, social workers, police, etc. - must be granted a relatively wide freedom of action, for it is they who must choose exactly which measures to apply in the individual cases (Adler and Asquith 1981). In other words, they must be granted the right to judge - independently, and with their own responsibility - which measures are appropriate in a given situation. *It is the sum of their*

actions which constitutes the public program. As for whether these actions reflect the objectives laid down by the democratically constituted organs - this must be regarded as an open question (Lipsky 1980).

Accordingly, many decisions of great importance for the well-being of individual citizens are made by local public organs and individual officials (Elster 1992). What we might call a *black hole of democracy* appears here, i.e. the administrators and officials who decide over the welfare of citizens can be difficult (well nigh impossible, in fact) to hold in any way responsible for their actions (Rothstein 1998). The elected politicians thus have but limited influence over the actual substance of public policy or, expressed more directly, over what the state in these cases actually does with the citizens. For the operative personnel must be granted the prerogative of assessing the constantly changing situations *in their context,* and of taking measures in accordance with this assessment. This places heavy demands on (a) the organization of the program in question, and (b) the legitimacy of the measures taken. One way in which this has been dealt with in the Nordic welfare states is to allow for choice of producer and to open up for a limited amount of competition between producers. Beginning in the early 1990s, Denmark, Sweden and to some extent Norway and Finland have introduced such models within public school education, health care, day-care/pre-schooling and elderly care, partly as a response to the "black-hole" problem in service delivery. The system works mainly on a "voucher" basis where the producers (could be private firms, non-profit organizations, producer-cooperatives or user-cooperatives) receive public funding for their services, provided that they adhere to rules and regulations (including inspections) set by the government and/or the Parliament (Blomqvist and Rothstein 2000). These are thus not pure markets, as funding, rules and regulations are determined by the state (Lundqvist 1988). For schools, the U.S. equivalent would be the so-called "charter schools".[16] About twenty percent of school children in Sweden and Denmark now attend such schools. The logic of legitimacy within these models is twofold. First, if not being content with the service, the citizen is given the possibility to switch to another producer. Secondly, since these services are run using tax-payers' money, and since such money should not be used on an "anything-goes" basis, government authorities retain some influence and have the right to withhold funding. There is quite some evidence that this system has worked to increase legitimacy for the universal welfare state system (and its high level of taxation), not least among the middle-class.

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[16] More than one colleague in the U.S. have found it quite amazing that "semi-socialist" Denmark and Sweden have a full scale charter school system.

Interestingly, with some minor exceptions, this is not a politically controversial question between the left and the right in the Nordic countries.

The Lottery-Based Model

All of the models discussed above proceed on the assumption that legitimacy in the implementation stage can be achieved, if only those deciding have the right combination of resources, knowledge, and values. For certain types of decisions, however, it is impossible to find such persons. The number of decisions may, for example, be very large while the number of persons with the right combination of qualities is small. There are also times when an administrator must decide how to distribute a benefit or burden, even when it is altogether clear that no acceptable criteria for making the decision can be found (however great the knowledge and resources of the administrator, and however noble his values). Or it may entail too high a price - in relation to the matter's importance - to gather all the information needed to make a correct decision. In order to avoid making such decisions on a wholly arbitrary basis, lots are sometimes drawn to settle the question. This somewhat unusual method is used, for example, in deciding who may enter certain types of university studies in Sweden; a number of countries also employ it for deciding who shall perform military service. In the absence of usable criteria, then, chance is made the basis of legitimacy; the sense of justice it expresses is reflected in the statistical fact of everyone's equal opportunity.

In some situations, moreover, the judgments of professionals can appear so uncertain as to make a procedure based on random selection appear objective and fair by comparison. An example of this can be seen in disputes over child custody. In trying to adjudicate such disputes, the state seeks the opinions of various professional experts concerning each parent's suitability as custodian of the child. Jon Elster has argued, however, that verdicts in such cases are based on such uncertain grounds that it would be better to draw lots. A lottery has, in addition to its evident simplicity, the advantage of furnishing parents with a powerful incentive to solve the problem themselves (for otherwise each runs a 50% risk of losing). As the organization needed for this procedure is minimal, moreover, drawing lots would spare both society and those directly involved (not least the children) heavy economic and social costs (Elster 1989).

Paradoxically enough, however, a lottery requires great public confidence in the impartiality and honesty of the officials carrying it out: as particular results cannot be repeated, opportunities for checking the validity of the procedure are limited. If the model is to work, then, citizens must trust the officials not to cheat. From a democratic perspective, of course, the model is problematic; it allows representative organs no influence whatsoever over implementation. Yet, drawing lots is sometimes suitable nonetheless - as when a decision must be made despite the fact that (a) the state lacks appropriate criteria for making it, or (b) the authorities care little about *which* decision is made, as long as *some* decision is made. An example of the latter is when the state wants a certain proportion of the able and eligible population to serve in the army, but cares little about who in particular is chosen to do so. Another attractive feature of the lottery model, finally, is the recognition it implies that the state is not an omniscient organization, that it lacks the competence to decide certain questions.

Summary: The models of legitimacy

Starting with the need for creating legitimacy at the output side of the democratic machinery and with the hypothesis that the "rule of law" is not the only way to do this, the argument is summarized in the table below.

Table 1. Five models of political legitimacy

MODEL:	Bureaucracy	Profession	Corporatism	Pseudo-market	Lottery
Basis of legitimacy	General rules	Evidence based expertise	Equal group representation	Choice and public regulation	Equal chances
Organization	Hierarchical	Collegial	Multi-partite	Private	None
Main actor	Public official	Professional	Representative	Producer	Lottery over-seer
Precondition	Precise rules	Applicable knowledge	Monopolized interest	Information about supply	Reliability
Problem	Inflexibility	Asymmetric knowledge	Dominance of special interests	Differences in ability to make choices	Unpredict-ability
Advantage	Prediction	Evidence-based knowledge	Cooptation and flexibility	Competition	Statistical impartiality
Type of decision	Interpretation of rules	Professional judgment	Negotiation	Where to buy, what to produce	Drawing of lots

By tracing the implications of the need for legitimacy in the implementation of public policy, it has been possible to understand why public administration assumes such varying forms in modern democracies. We can also better understand the reasons for a failure to achieve legitimacy - failure results when an administrative model is applied to an area in which the conditions requisite to its successful application are lacking. A tendency to resort to simple dichotomies may be observed in the public policy literature; societal mechanisms of direction and coordination, for instance, are often reduced to two simple forms - markets vs. hierarchies. Yet such dichotomies are altogether too crude, at least in the case of the modern welfare state. Policies are not implemented on the basis of a single organizational model, but rather in a wide variety of ways. The challenge is to account for the great variation in

administrative methods, and furthermore to explain why the representation of interest groups is more frequent in some policy areas than in others.

If the representational system is democratic, citizens will regard political decisions as legitimate - so goes the precept in mainstream democratic theory. As this presentation has shown, however, such a basis of legitimacy does not suffice; rather, the state must employ a wide range of methods if its decisions are to appear justified in the eyes of its citizens. The manner in which public administrations are organized is not just a question of rationality and efficiency. It is, rather, of critical significance for the overall legitimacy of the political system. This argument is built on the idea that citizens generally come into contact with the output side of the political system - with the administration, that is - far more frequently and intensively than they do with its input side. Moreover, what happens to them on the "output side" is often of crucial importance for their well-being. One could say that the administration *is* the political system - as citizens concretely encounter and experience it. The character of the administration is therefore decisive for the way in which the political system is viewed. However, my argument is not that if a country is going to democratize, legitimacy through impartiality in the exercise of public policies should come before "free and fair" elections (Berman 2007; Carothers 2007). My argument is instead that impartiality as the basic norm for generating legitimacy on the output side of the political system is the equivalent to "political equality" as the basic norm on the input side, and that respect for both sides/norms must be considered as central in a process of democratization. The input side/political equality certainly is important, but probably not for creating political legitimacy. Simply put, my argument is against privileging the input side as well as restricting the output side to the "rule of law" in this discussion

Epilogue – what is electoral democracy good for?

The argument in this paper has been that a) political legitimacy ought to be the ultimate goal for any system of governance b) there is very little that speaks for the idea that electoral democracy can be the main political instrument for creating political legitimacy. The question is then why elections may be good and what other role elections in a representative democracy can play. Let me very tentatively present three ideas. The first is that although

imperfect, there appear to be no other reasonably well working solutions to how to recruit and replace political leaders. Even if these leaders do not follow the "will of the people" theory, having been elected may give them a kind of symbolic legitimacy. Maybe one of the most interesting things with the communist dictatorship (and many others) is their complete inability to handle the problem with succession. Dictatorships and other forms of authoritarian systems become gerontocracies. The second argument also concerns the political elite. It appears to be the case that any ruling group, whether or not democratically elected, sooner or later loses touch with reality. The reason is probably that, after a while, most systems of power tend to shield leaders from information (or to be more precise, the carriers of information) they do not appreciate to receive. In the latest Swedish elections, which the Social Democrats lost, the leader of the party maintained during the election campaign that a) unemployment was not a big problem, and b) the public school system was in good shape. A fair guess is that many voters experienced a reality that in these two areas were very different. In authoritarian regimes, things are of course much worse. The Romanian leader Ceauşescu seems to have been convinced that his people strongly supported him at the very eve of his dismissal from power in 1989. When in 1989 the Polish Communist Party for the first time decided to allow for competitive elections to the new Senate, they appear to have been convinced up until the eve of the elections that they would get a majority of the seats. In fact, they got none. The same appears to have been the case for Pinochet in Chile and for the Sandinistas in Nicaragua in 1990.[17]   My point is that democratic elections force political leaders to pay close attention to reality (or to be more precise, the perceived reality among a majority of the population). When the world's most successful democratically elected political leader, the Swedish Social Democrat Mr. Tage Erlander, resigned as party leader and Prime Minister in 1969 after having ruled for an uninterrupted twenty-three years, he gave a piece of advice to his successor Mr. Olof Palme that became legendary. It was: "*Listen to the Movement*" ("movement" in this case being the labor movement). Thus, he did not say "do what the people want you to do", or "be guided by the will of the people". A reasonable interpretation of "listen to the movement" is: *Keep track of reality.*[18]

Lastly, but here I am less certain, elections may be good for the general political discussion and the education of citizens about public matters. Politicians have to present alternatives, they have to argue for why their policies are better than their opponents', and in some cases

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[17] Thanks to Adam Przeworski for providing me with this information.
[18] This idea comes from many discussion about Swedish educational policy with AnnChristin Rothstein

mass media is said to enlighten citizens about the feasibility and moral logic of these alternatives. However, even in a stable democracy like Sweden, the empirical evidence for this to take place is not overwhelming (Petersson 2006).

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