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Introduction

The Thesis

Social Nostalgia

OVER the course of the last two centuries, we have developed a new mode of governance—the administrative state—and it makes us feel miserable. We rail at the bloated bulk and dreary pragmatism of our public institutions. We condemn the uninspired, cumbersome rigidity that, despite such pragmatism, makes those institutions ineffective. We yearn for times that were not only simpler but more joyous and more integrated, when our individual experience was directly connected to the collectivity and we inhabited a political world that was suffused with moral values. This set of attitudes can be described as social nostalgia.

Social nostalgia pervades both our political and our popular culture. Citizens complain that government has become too large, too bureaucratic, too remote. Politicians, even when they are incumbents, regularly campaign against the prevailing administration, promising to restore the virtues of some prior period, to bring the government “closer to the people,” or to “return to normalcy.”¹ In the movies, anyone with an ordinary administrative role—an office supervisor, university dean, or government official—is either an actual villain or, at the very least, an impediment to justice and good sense. How often have we seen our hero, a police officer, for example, slam his badge down on the captain’s desk and say, “I’ve had it with your rules; now I’m going to take care of things myself.”² Indeed, the romance of life outside the administrative state rivals sex and violence as the dominant theme in contemporary cinema. The Wild West, the Middle Ages, the urban ghetto, outer space, and Earth after a nuclear or environmental holocaust all serve as settings where heroism and adventure flourish in the absence of bureaucracy. One might imagine that the planetary and interplanetary regimes in *Star Wars* would require a good deal more administrative resources than the small segments of our own planet that constitute contemporary nation-states, yet planets are ruled by queens and princesses, the evil intergalactic empire is controlled by Darth Vader’s personal commands, and political conflicts are resolved by individual combat between opposing leaders.³

The thesis of this book is that many of the basic concepts that we use to describe our current government are the products of social nostalgia. The three branches of government, power and discretion, democracy, legitimacy, law, legal rights, human rights, and property are all ideas that originated in pre-administrative times and that derive much of their continuing appeal from their outdated origins. Of course, they are sedimented with many centuries of subsequent thought,⁴ and are so central to our prevailing theories that they themselves have become causal factors, structuring our institutions and our interactions. But in the final analysis, it will be argued, these concepts are simply not the most useful or meaningful ones that we could find to describe contemporary government. Our thoughts fare like Miniver Cheevy, who “grew lean while he assailed the seasons.”⁵ They reveal an abiding distaste for our current situation, a distaste that is sufficiently profound that we have difficulty confronting the reality of the government we actually possess.

Social nostalgia may seem like an odd notion, almost an oxymoron. The term ‘nostalgia’ generally refers to an individual experience, the longing that people feel for some previous period in their lives. It is often ascribed to the experience of loss—a village destroyed, a neighborhood transformed, a baseball team transferred.⁶ Nostalgia of this sort can be a collective phenomenon if a group of people share the same experience, such as the conquest of their homeland by a foreign power. Raymond Williams notes a permanent pastoralism in English literary culture, as each generation mourned the loss of the rural world that its members knew in their own childhoods.⁷

But the social nostalgia that generates our collective yearning for the pre-administrative state seems different, since no living person who has grown up in a contemporary Western nation can remember any different mode of governance. It must be based instead on a collective memory, in Maurice Halbwachs’s terms,⁸ an image of some prior era that is preserved and yet constructed by the written texts and continuing traditions of society. Such memories are common, but they are not self-activating; history also provides numerous examples of texts discarded, traditions abandoned, and entire epochs or social experiences consigned to oblivion. Our present yearning for the pre-administrative past seems motivated by our collective dissatisfaction with the particular system of governance that we have created, and in which we find ourselves inextricably immersed.⁹

One should not imagine, however, that social nostalgia is a unique affliction of these unpoetic, overcomplicated times, or that in other eras, when the world was younger, people were better integrated and more optimistic. That would be social nostalgia. People always feel that their era is the oldest in the world—as indeed it always is—that life is dreary, and that the difficulties they confront are particularly severe. Their yearning for the past regularly dominates the present, dictating taste in art and architec-

ture, and teaching virtue through archaic, misinterpreted examples. For the entirety of the past millennium, images of classical antiquity have held the Western world in thrall; Burckhardt found this to be the defining mentality of the fifteenth and sixteenth centuries,¹⁰ Charles Homer Haskins then identified it as equally central to the twelfth century,¹¹ and R. W. Southern discovered the same inclination, albeit in somewhat more diluted form, in the tenth and eleventh centuries.¹² The stranglehold of classical antiquity was partially broken in the nineteenth century, and then only because it was displaced by a newfound yearning for the Middle Ages¹³—those same Middle Ages that had themselves been yearning for antiquity. Similar attitudes, of course, prevailed in antiquity itself. The Imperial Romans, the Republican Romans, the Hellenistic Greeks, even the Periclean Greeks were all persuaded of their own degeneracy. If we go back to the very dawn of the written tradition in the West, the time when, by all subsequent accounts, the world was young, we find this same ever-unrequited yearning.¹⁴ In the eighth century B.C., *Works and Days*,¹⁵ Hesiod's famous tantrum against his deadbeat brother, recounted four long eras that precede the present one, with golden people who never age and obtain food without working, silver people who enjoy a hundred-year-long childhood, bronze people made out of ash trees who have no need for agriculture, and “the godly race of the heroes who are called demigods,”¹⁶ all of this leading up to Hesiod's own iron age, where people “will never cease from toil and misery by day or night, in constant distress, and the gods will give them harsh troubles.”¹⁷

In a sense, then, the particular era that serves as the source of social nostalgia is irrelevant to the phenomenon itself; people will always find some prior period, whether real or imaginary, which they can use to flagellate the present. But in another sense, the choice is an important one, for the specific features of a prior, partially or entirely imagined past both reveal and influence the attitudes of those who yearn for it. This choice is rarely unconstrained, of course, since one period's nostalgia necessarily becomes incorporated into the cultural heritage of its successors. Thus, the same era may serve as the object of nostalgia for a number of successive periods, each period repainting the familiar image with the coloration of its own afflictions. Over time, the image becomes richly sedimented, and thus a source of real continuity. Such nostalgia-driven images exercise a profound effect upon the conceptual structure of society, becoming ever more difficult to analyze because they constitute the pre-empirical foundations on which the society's methods of analysis are based.

The Middle Ages

Our present nostalgia for the pre-administrative state venerates a variety of prior eras, including ancient Greece and Rome, pre-Columbian America,

the Wild West, and Enlightenment Europe. Its most common object, however, is the era in which the past millennium began, and which we now describe as medieval. Many of the concepts that structure our theories of government developed in that period and derive their continuing appeal from our yearning for its perceived simplicity, poetry, faith, sense of adventure, and youthful vitality. These yearnings, of course, are generally not explicit, and present themselves as condemnations of the present rather than as invocations of the past. Nonetheless, the Middle Ages, or rather our socially constructed image of the Middle Ages, is frequently the silent but implicit element in the comparison, the collective memory that infuses our present theories about government.¹⁸

The legacy of the Middle Ages is complex, however. To some extent, this era's influence on modern political and legal concepts rests upon a firm foundation, for, as Joseph Strayer and, more recently, Alan Harding have observed,¹⁹ many of our public institutions originated at that time. Medieval society created the first representative legislatures and established national courts that took evidence and dispensed justice according to pre-established rules.²⁰ The Magna Carta, our earliest codification of political rights, specified that these included trial by jury and due process of law.²¹ The nation-state itself, a secular, centralized regime that commands the primary political loyalty of its subjects, emerged during this period, replacing the empire, the city-state, the feudal hierarchy, and the tribe.²² Thus, the continued survival of the medieval mode of thought that spawned these institutions is not surprising, even though the nature of the institutions themselves may have been transformed by subsequent developments.

But there is much more to the Middle Ages and to our contemporary image of them. During this period, Europe's rude military encampments and rustic villages grew into cities, trade increased, and mercantile fortunes were amassed on a scale that had not been known for some eight hundred years.²³ Universities were founded and rapidly developed into institutions that dominated many of the newly developed cities and sent ideological shock waves rolling across the continent.²⁴ Vast cathedrals were constructed, great monasteries were established, stone castles sprang up everywhere. The military classes not only fought among themselves, but launched invasions against common enemies, expanding the boundaries of Christian Europe as they conquered Spain, the Mediterranean islands, Pomerania, Prussia, the eastern Baltic, and, however temporarily, the Holy Land.²⁵ Royal governments consolidated their control, and replaced their casually organized councils of leading warriors with staffs of tax collectors, record keepers, financial advisors, lawyers, and judges.²⁶

These developments generally made people feel miserable. They railed at the bloated bulk and dreary pragmatism of their institutions. They con-

demned the uninspired, cumbersome rigidity that, despite such pragmatism, made those institutions ineffective. They yearned for times that were not only simpler, but more joyous and more integrated. In other words, they suffered from social nostalgia.

This feeling sometimes attached itself to Ancient Greece and Rome, and sometimes to the more recent Carolingian Empire, but its most common, most distinctive object was King Arthur's court at Camelot. From the twelfth century to the fifteenth, a vast body of literature was created that celebrated the adventures of King Arthur and his knights. Perhaps the religious literature of the era was ultimately more extensive, but the Arthurian literature is certainly the most sustained political fantasy of the entire period.²⁷ Much of it was specifically designed to satisfy people's social nostalgia. It was set at the time when Roman rule was disappearing, and the historical record disappearing with it, to produce a marvelously empty space, an entrancing nothingness to be filled with unexplored forests, mysterious castles, and a life of adventure free of all the dreary realities and disconcerting developments of medieval society.²⁸ The political complexities of medieval times are nowhere to be found at Camelot. Arthur is the ruler of Britain, but he never devotes any time to administration; he never does anything as drearily mundane as collect taxes, appoint judges, or issue promulgations. He certainly never employs a lawyer. The annoyances of manufacturing and commerce are also absent; there are no merchants to contend with, no peasants to control, no crops to manage, and virtually no money.²⁹ In a very real sense, therefore, Camelot served as an escapist fantasy from the initial development of the administrative state in Western European nations.

It is perhaps this very feature that has preserved its appeal over the many years which followed. The legend of Camelot was still vibrant enough to be taken seriously by Malory³⁰ and several Spanish writers³¹ in the late fifteenth and early sixteenth centuries. There was a subsequent decline in interest, marked by the satire of Cervantes,³² but the fascination re-ignited in the nineteenth and early twentieth centuries, as indicated by the pre-Raphaelite painters,³³ the music of Richard Wagner,³⁴ the writings of Lord Tennyson,³⁵ Matthew Arnold,³⁶ Walter Scott,³⁷ Algernon Swinburne,³⁸ Benjamin Disraeli,³⁹ Mark Twain,⁴⁰ and Edwin Arlington Robinson,⁴¹ and by the explicitly Arthurian imagery invoked by the creator of the Boy Scouts.⁴² In our own times, the theme lives on in popular novels,⁴³ a Broadway play,⁴⁴ a variety of motion pictures,⁴⁵ a chain of pizza restaurants, and a Las Vegas hotel,⁴⁶ while its more general influence lies heavily on the entire genre of contemporary fantasy. The six long, very popular *Star Wars* movies, although ostensibly science fiction, are heavily Arthurian in atmosphere and spirit, while the *Lord of the Rings* trilogy⁴⁷—which recently became three very popular and even longer movies—was

actually written by a medieval scholar. When Jacqueline Kennedy sought to characterize her husband's administration, a week after his assassination, it was not the economic revival that he engineered, not his successful resolution of the Cuban missile crisis, not his tireless campaign for civil rights legislation, not the Peace Corps, and certainly not his efforts to increase employment, alleviate poverty, and modernize governmental operations through administrative action that she chose to accentuate. Nor did she use the New Frontier, Kennedy's own forward-looking and very American sobriquet. No, the image that Mrs. Kennedy insisted that her family's favorite journalist, Theodore H. White, invoke to describe the Kennedy administration in his exclusive *Life* magazine interview was that "one brief shining moment that was known as Camelot."⁴⁸

It is a further thesis of this book that our theories about government are not only derived from the Middle Ages, but represent a mixture of the political thought of the Middle Ages and the political fantasies of that era, in particular the legend of Camelot. Our social nostalgia for the pre-administrative state, as specifically focused on the medieval world, thus preserves that period's own social nostalgia. It does so because realism and fantasy were fused, profoundly and inextricably, in the alembic of people's minds at the time, and thus projected forward as a single body of thought. In addition, when we look back upon a prior era, driven by our own social nostalgia, we tend to forget that people then felt miserable, that they sought relief in their own nostalgic fantasies, and so we assume the linkages they forged represent a coherent, integrated vision. And finally, we preserve this mixture of realism and fantasy because the fantasy, a sedimented image communicated across time, appeals to us as profoundly as it appealed to its bygone originators.

The Nature of the Thesis

This thesis bears a certain resemblance to Raymond Williams's idea of key-words in Western culture,⁴⁹ to W. B. Gallie's and William Connolly's essentially contested concepts,⁵⁰ to Daniel Rodgers's contested truths,⁵¹ and to Terence Ball's critical conceptual history.⁵² It shares the view that words shape our concepts and that concepts shape our theories, and also agrees that these words and concepts possess inherent ambiguities because they encompass our deepest value conflicts, and are sedimented with the multiple meanings that have been attached to them over many centuries of use. It further agrees with Connolly that these concepts generally possess an identifiable core, that their multiple meanings bear a Wittgensteinian family resemblance.⁵³ But this thesis goes on to assert that each concept's identifiable core is so replete with prior meaning that it dumps those meanings indiscriminately into any setting where it is invoked. As a result,

our conceptual categories bear the indelible imprint of the prior era when they took shape⁵⁴ and control our current controversies in ways that we neither desire nor expect.

Of course, most words in our language have pre-modern origins, and we use them without serious disadvantage, even when their underlying concept has been transformed by subsequent developments. From classical to relatively recent times, for example, people believed that physical reality was composed of four essential elements: air, water, earth, and fire.⁵⁵ This taxonomy, however evocative, is now regarded as lacking any scientific value. Nonetheless, we have been able to adapt the word ‘element’ for contemporary scientific purposes, and even occasional references to the older meaning of the term do not create confusion. Journalists can speak of a mountain climber braving the elements without anyone thinking that they are challenging the validity of the Mendelevian system. But as Wittgenstein insisted, basic terminology reflects the forms of life that generated it.⁵⁶ The contention in this book is that our continued use of pre-modern concepts for modern government embodies the thought processes of a prior era, its way of conceiving the world, of creating categories, and of determining the relative significance of different issues. As such, these concepts are an impediment to understanding, and control our current thinking in ways that are genuinely counterproductive. It is as if we never quite managed to formulate a verbal description for substances whose atoms have a given number of protons, and were induced by the pre-modern meaning of the word ‘element’ to lose track of our own best theories and keep searching for physical regularities among air, water, earth, and fire.

Even if this admittedly controversial contention is correct, however, it seems implausible to suggest that we can actually abandon the keywords and contested concepts that have been developed and deployed during the preceding millennium. In fact, all the evidence that argues for their obsolescence simultaneously makes their abandonment unlikely, for if pre-modern concepts possess such durability when contradicted by events, how could they be so quickly overthrown? To observe that they are dysfunctional, or that they experience increasing strains as the administrative state progresses, is hardly a sufficient answer. The force of social nostalgia sustains them, and the range of historically meaningful debates that they embody ensures their continuing survival.

It would also be implausible to suggest that our political science and legal concepts could be displaced by something called reality, that is, by an accurate, unmediated description of the modern state. Terms such as branches of government, the social contract, power, even rights, are metaphorical, of course, but all thought is metaphorical. The effort to replace metaphor with some objectively demonstrable theory is what Hilary Put-

nam describes as the fallacy of metaphysical realism.⁵⁷ Even if one does not want to accept Putnam's analysis with respect to the physical sciences, it seems unavoidable with respect to the human sciences, for at least two reasons. First, the events studied by the human sciences rarely yield to quantification, and can only be rendered comprehensible by more impressionistic models. Second, these events engage our emotions more intensely, thus setting off associations between the subject under study and a wide range of collateral and equally emotion-laden issues. Any theory built on such impressions and associations will necessarily be metaphorical in character.⁵⁸

Consequently, this book does not suggest that we should abandon our current political science and legal concepts, nor that these concepts can be replaced by objectively valid ones. Its purpose is considerably more modest; it is, in essence, an extended thought experiment. As such, it is directed to scholars, policy analysts, and judges, that is, to those whose role is to regard modern government from a conceptual and at least partially detached perspective. What would happen, it inquires, if we were to bracket, or hold in abeyance, our existing concepts, if we were to perceive them as the much-embellished relics of a prior era rather than the building blocks of contemporary political science and legal analysis? Would we gain any insights into the nature of the administrative state that we have created, and in which we find ourselves immersed? What would happen, moreover, if we were to search for a new set of metaphors, ones that were the products of our own era rather than a prior one? Could these alternative conceptions provide ways to clarify our thoughts, and thereby free us from the unnecessary implications of our inherited ideas? Could they help policy analysts and academics achieve new perspectives on which they could base recommendations for improving governmental operations? Could they help judges reach decisions that better achieved their intended purposes?

The idea of bracketing a concept is taken from Husserl's phenomenology. It is the process of setting aside the validity claims of the "sciences which relate to this natural world."⁵⁹ This does not involve refuting such validity claims, but simply suspending them for a delimited period of time. "[T]hough they stand never so firm to me," Husserl writes, "though they fill me with wondering admiration, though I am far from any thought of objecting to them in the least degree, I disconnect them all, I make absolutely no use of their standards, I do not appropriate a single one of the propositions that enter into their systems."⁶⁰ The term 'disconnect' is an evocative one, and suggests an analogy to an electrical appliance such as a television set. Ordinarily, the television sits in the middle of the living room, a source of news and entertainment for the entire family. If Mom and Dad decide to disconnect the set, it will still be there, just as it always

was. But as long as it remains unplugged, or disconnected, it can be regarded as an object. Suddenly, one perceives the play of reflected light across the screen, the scratches on its side, its contrast with the living room's traditional decor. One also becomes aware of the amount of time the family spends in front of it, the way it structures family life, and the kinds of information and entertainment one obtains from it. These insights into a thing's appearance and one's relationship to it are the sorts of insights that we obtain from the phenomenological process of disconnecting the thing's normal operation. Without actually extirpating it from our minds—a practical impossibility for the basic and familiar terms under consideration here—we can bracket it, that is, suspend its claim to validity and pursue the thought experiment of considering alternatives.

Bracketing our inherited ideas—setting them aside entirely and trying to describe the underlying subject in other terms—may seem like an extreme solution. But these ideas are so influential, so historically sedimented, that it may be the only way for us to obtain control over their claims, their imagery, and their insinuations. It should not be argued, in response, that our inherited ideas have some uses, regardless of their inaccuracies, that they should not be bracketed because they retain some meaningful application. Of course they have some uses—they are a thousand years old, and have been continuously reinterpreted throughout their long existence. But “some use” is not a valid justification for descriptive metaphors. The point of such metaphors is to create a comprehensive framework for analysis and evaluation, to provide an instrumentality of thought that functions across the whole range of its application. The theory that the earth is flat has some use—one needs nothing more to design a garden or to build a house—but it is not a useful conception because it fails in other aspects of its asserted range. Progress was made by bracketing the idea of a flat earth and trying to conceive alternatives.

The difficulty with saving inherited ideas because they have some use, or trying to refurbish them so that they can be retained despite the felt need for redecoration, is that these ideas are far too potent to be domesticated in this fashion. They are the genii and demons of our mental landscape, creating, transforming, and distorting it before our eyes and beyond our will. Terms like democracy, legitimacy, law, or rights structure our conception of government in highly specific ways, making conceptual incisions that cannot easily be reconfigured. Consider, for example, the idea of rights. It proclaims an organic unity between moral constraints on government and legal claims established by statute, and it divides these constraints and claims from the policy initiatives of the general populace and their elected representatives. At the same time, it generates an image of individuals as possessing some inherent ability to impose such constraints or present such claims, thus advancing strong assertions about people's rela-

tionship to government and to each other. None of this can be readily controlled by definition because the scholar's invocation of an idea such as rights calls forth the cumulative voices of our entire intellectual tradition, a booming chorus that will drown out any judicious comments and careful qualifications that the individual scholar might suggest.⁶¹

In fact, many scholars do not try to cabin the influence of inherited ideas with definitions, but rather rely on these ideas as arguments. After all, it is always nice to have a booming chorus on one's side. Even the most insightful and systematic thinkers frequently succumb to this temptation, whether because they are consciously drawing on the force of these ideas, or unconsciously allowing themselves to be controlled by that same force. Alexander Bickel opens his famous book with the sentence: "The least dangerous branch of the American government is the most extraordinarily powerful court of law the world has ever known."⁶² But the dramatic irony of this statement depends on the implicit comparison of the Supreme Court to Congress, and to the president and all the federal departments and agencies taken as a unit, and Bickel fails to explain why this is the proper comparison, relying instead on his use of the term 'branch.' Michael Mann begins his magisterial discussion of social power by defining it as either the "mastery exercised over other people" or the ability of people to exercise joint control "over third parties or over nature,"⁶³ without pausing to consider why one would treat the varied relationships comprised by this definition as a single entity. Amy Gutmann and Dennis Thompson, in their leading discussion of deliberative democracy, declare that democracy is "a natural and reasonable way" to live with moral disagreement "since it is a conception of government that accords equal respect to the moral claims of each citizen, and is therefore morally justifiable from the perspective of each citizen."⁶⁴ But the authors fail to explain why they define this twenty-five-hundred-year-old term in a manner that excludes any government prior to the twentieth century, and that incorporates a highly controversial assumption that democracy either implies, or inevitably achieves, the universal moral approbation of its citizens. Jürgen Habermas declares that the "legitimacy of statutes is measured . . . according to whether they have come about through a rational legislative process"⁶⁵ without considering why such legitimacy should serve as a standard for either moral or effective government.

With respect to the concept of law, Theodore Lowi condemns liberalism as "hostile to law,"⁶⁶ but fails to tell us why such hostility merits condemnation. H.L.A. Hart, while rejecting the idea that law is equivalent to a coercive order from the sovereign, states, nonetheless: "where there is law, there human conduct is made in some sense non-optional or obligatory."⁶⁷ He never discusses why it is important to distinguish such actions by the government from other governmental actions that are regularly im-

plemented by statutes, or “laws,” such as creating institutions, providing benefits or subsidies, allocating resources, and issuing hortatory or honorary declarations. Ronald Dworkin defines rights as “political trumps held by individuals” and continues by saying that “individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do.”⁶⁸ He does not tell us why rights must be held by individuals, as opposed to groups, or why a right is something that is capable of being “held” in the first place. Robert Nozick states that the “central core of the notion of a property right in X . . . is the right to determine what shall be done with X”⁶⁹ and argues for severe restrictions on the authority of the administrative state so that this right is not impaired. But he never explains what is important about the ability to determine what is to be done with something, nor does he ever tell us the limits or extent of X. To be sure, one cannot question every concept, or aspire to the rigor of quantum electrodynamics in political science and legal studies. But the concepts listed here are so redolent with ancient meanings, and play so prominent a role in the arguments being advanced, that they often appear to be speaking through the scholar, and imposing the imagery and norms of a prior, bygone era on our efforts to understand the government we actually possess.

Nor is this a problem that is restricted to the realm of scholarship. Few elected or appointed officials read contemporary academic literature, and even fewer cite it, but that is not necessarily a measure of the scholarship’s importance. Scholars strongly affect what is taught in school; while contemporary politics also plays a role, and a large one in totalitarian societies, the basic curriculum is largely a redaction of scholars’ cumulative work. Going beyond such causal influences, scholarship can be understood as an explicit expression of the conceptual process by which a modern society understands itself, and formulates its policies and plans. When we look at political science and legal scholarship, we are not seeing the self-contained ceremonies of a cloistered, recondite elite, but rather the visible and audible manifestations of comprehensive social efforts to determine and achieve a good life for ourselves. All such efforts are affected by concepts like democracy, legitimacy, law, and rights. Besides, these concepts are not restricted to scholarly works, the way more specialized and arcane concepts such as functionalism or ethnomethodology may be. Political participants use them regularly in debate, in collective planning efforts, and in their own less visible but hardly nonexistent thought processes.

The basic point is that we enter this third millennium with a set of concepts about government that were developed in the first few centuries of the preceding one. Those concepts, moreover, were cobbled together from ones that developed during the first millennium, and during even earlier times when people did not know that they were living in any millennium

at all. Worse still, it can be said, in defense of the people at the beginning of the second millennium, that they were at least being true to their own values when they allowed themselves to be controlled by earlier ideas. They believed in the sanctity of tradition; for them, the past was directly applicable to the present and possessed the validating quality of age. We believe in progress, not tradition, and we recognize the enormous differences between prior societies and our own. We have no reason to be bound by previous ideas. The millennium we are entering offers great opportunities and poses great dangers—opportunities and dangers that we now know, unlike our predecessors at the beginning of the previous millennium, that we can neither predict nor imagine. To prepare ourselves for these vast developments, we need, at the very least, a set of concepts that accurately depicts our current reality and reflects our own genuine values about our relationship to the past and to the future.

The Method

Doubt and Bracketing

With the thesis presented, it is now necessary to say something about this book's methodology. The central element in this methodology, so central that it needed to be stated above as part of the thesis, is to bracket some of the concepts we have inherited from the pre-administrative era, to set them aside and conduct the thought experiment of describing the government we actually possess without relying on them. But how should the concepts to be subjected to this process be selected? Once again, we can look to Husserl, who employs a technique that he calls Cartesian doubt.⁷⁰ Descartes decided to begin by doubting everything, but quickly retreated from this stance, first by relying on thought itself, and second by relying on God.⁷¹ Husserl adopts a more unalloyed form of Cartesian doubt, arguing that we can initiate a process of bracketing all reality by the conscious mental exercise of doubting it.⁷² The present inquiry is not designed to call all reality into doubt, of course, but only to challenge the centrality of certain inherited ideas. Like reality itself, however, these ideas present themselves to us as "given," that is, as part of an established order that we generally accept without reflection. In most cases, we simply assume that concepts like the three branches of government, power, discretion, law, rights, and democracy represent useful categories; even when we are trying to define them with precision we do not doubt their existence or utility. To call them into question requires real mental effort. It requires us to nurture doubt—not the Cartesian doubt that Husserl describes, because we are not questioning all reality, but quasi-Cartesian doubt, because we are questioning particular concepts that, within a delimited field

of inquiry, have a quality of givenness analogous to that possessed by reality in general.

This study will treat a familiar political or legal concept as eliciting quasi-Cartesian doubt if it displays two characteristics. The first is that it evolved in the pre-modern era, and was organically connected to the general conception of the state, or government, that prevailed at that time. The second is that its usage in contemporary accounts of government seems to produce a sense of dissonance or incongruity, a grinding of intellectual gears, when applied to a modern administrative state. The point is not to disprove the concept, or to marshal arguments against it, since these concepts, given their essentially metaphorical character, cannot really be disproved. Rather, analysis will be directed to the concept's fit or feel. Does it carry with it pre-modern associations that lead scholars to condemn administrative government on pre-analytic grounds, or to make distinctions that run counter to the structure of the government we actually possess? If a concept displays these characteristics, doubts about its continued utility should arise in our minds; we should begin to question its analytic value, no matter how basic and familiar it appears.

Once a concept elicits this quasi-Cartesian doubt, the next step is to bracket it, to set aside its validity claims, as discussed above, and explore the possibility that we might describe its subject matter differently. The alternative descriptions that will be suggested in this book are drawn from modern business practices and from mechanical and electrical engineering. Of course, government is neither business nor machinery; the proposed alternatives are heuristics, designed to provide illumination, not demonstrable truth. They have been chosen because they are aggressively contemporary. There is no point bracketing our medieval and Arthurian concepts of government only to replace them with images that carry the very same implications that we are trying to excise. Using contemporary images is a means of protecting ourselves against the beckoning voice of our collectively remembered past.

The search for these new concepts does not lead into a conceptual abyss. Instead, it provides validation for many of the existing efforts of contemporary scholars and political participants. During the past several decades, numerous scholars in political science, sociology, and law have managed to master our collective distaste for modern times and look at our existing system of governance with calmer, more sustained attention. Their work has begun to expose the prosaic machinery of public administration, the grimy devices and convoluted circuits that constitute our means of managing ourselves. But this work has placed itself, quite consciously, at the level below general political science and legal theory. To some extent, moreover, it has been constrained by that theory's long-established categories. Among political participants, the same few decades have seen im-

pressive creativity in the development of governmental strategies and programs, but these developments, constrained by those same categories, have been limited in scope, and have not been recognized in general political debate. Holding our inherited categories of thought in abeyance will reveal that the seemingly mundane scholarship of public administration constitutes a new political science and legal theory for modern government, while certain political developments point the way toward far-reaching solutions to our present quandaries.

The Criteria for Alternative Imagery

After contemporary imagery has been used to generate a new heuristic, the next question is whether this alternative description is superior to the existing concept it is designed to displace. It certainly resolves the quasi-Cartesian doubt that attaches to this existing concept because of its pre-modern origins, but does it also remove the doubts generated by the awkward fit between the existing concept and the situation it describes? To determine whether the thought experiment truly provides new insights into the nature of modern government, the alternative concept needs to be systematically evaluated. The criteria that this study will employ are whether the alternative captures our emotional commitments, whether it reflects the heuristic character of theory, and whether it facilitates a mode of explanation that will be referred to as microanalysis. While these criteria can be derived from the application of phenomenology to social science,⁷³ they are presented here as intuitively plausible ways to evaluate a conceptual or metaphorical image of political reality.

The requirement that an explanatory concept reflect our emotional commitments is derived from the idea that all theory is socially constructed. While this view remains controversial with respect to natural science, it has become sufficiently widespread to serve as a working premise in the social sciences.⁷⁴ Because social science theories cannot aspire to objective or transcultural veracity, any theory we develop should serve our culturally determined, or intersubjective purposes;⁷⁵ it should explain things that we believe are important to explain, and do so in a way that enables us to improve our lives.⁷⁶ In order to make this determination, it is necessary to identify our commitments.⁷⁷ The commitment that will guide this inquiry is the one that has been regarded as central to our political morality since the Middle Ages: that the government's purpose is to benefit its citizens. This principle can be operationalized by considering the nature of the benefits. Scholars as diverse as Henry Shue and Robert Cooter suggest that these benefits are security, prosperity, and liberty.⁷⁸ Shue, who is describing rights rather than benefits, identifies subsistence rather than prosperity as the third value. Since the effort here is to identify policy

goals, not basic rights, the minimal goal of subsistence should be replaced with the related, but more aspirational goal of prosperity, or affluence. The manner by which these goals are reached is important as well. We want the government to be effective in achieving its goals, we want it to do so efficiently, which means with the lowest possible expenditure of resources, and we want it to do so fairly, which means that benefits are reasonably distributed, and limits are placed on the sacrifices individuals are required to undergo.

No effort will be made in this study to justify these commitments, which is the reason they will be described as merely emotional, and not as normative, that is, as elements of a coherent moral system.⁷⁹ Providing such a justification would involve the entire field of political philosophy, which is far beyond the limits of this study. Instead, the existence and centrality of these commitments will be taken as empirical fact about our own society, and used as a criterion for evaluating the concepts under consideration without further analysis.

Another commitment, it has been argued, that strongly motivates academic inquiry is social nostalgia. This book is designed to separate social nostalgia from our genuine commitments and to reject it as a basis for selecting research projects or framing recommendations. While social nostalgia possesses a certain aesthetic appeal, it lacks the intensely felt and widely held character of our commitments to security, prosperity, and liberty. It is a clandestine commitment that few scholars or political participants would admit to in this pragmatic, instrumental era, a sort of conceptual narcotic that is smuggled into scholarship or policy analysis to assuage our distress about modernity. Alternative descriptions of the modern state will thus be judged not only by their ability to fulfill our genuine emotional commitments, but also by their ability to interdict intellectual contraband such as social nostalgia.

The second major criterion for judging the value of alternative concepts is the extent to which these concepts signal their heuristic character. Virtually all the terms and concepts that we employ in political and legal theory are heuristics, or metaphors, rather than observable features of the world. The power that our muscles produce, or that surges through electric lines, can be safely treated as a real thing; the power exercised by political leaders is a metaphorical characterization. Statutes are real enough, but law is a metaphor; elections are real but democracy is a mental image; the president, Congress, and the federal judiciary are certainly observable entities, but the three branches of government exist only in our minds. The problem is that such well-established concepts, which we have developed and employed over the course of many centuries, tend to become reified. People in Western culture have been writing, talking, thinking, and arguing about power, democracy, law, and the three branches of govern-

ment for hundreds of years, and this ubiquity of usage tends to make these concepts seem like naturally occurring categories. Moreover, since everyone wants to claim that their own theory fits within, or captures the essence of, these blessed categories, many different arguments become coagulated into a single concept. The result is not only reified metaphors, but awkward, counter-intuitive metaphors that owe their continued impression of coherence to this conceptual coagulation.

A related difficulty is that these reified metaphors induce observers to overinterpret their data, to offer explanations that are not justified by the evidence on which the observer purports to rely. This tendency is motivated by the effort to find meaning, the intensely felt desire to place events in a framework that seems coherent to the observer. Because intelligent observers can always devise explanations that support their pre-empirical interpretive theory, the use of such interpretations reveals only the potential limits of the theory, and the intellectual power of the theorist. It does not necessarily provide the most plausible explanation for the information available. Reified, conceptually coagulated metaphors are engines of overinterpretation because these metaphors impose unnecessarily elaborate explanations on the data, and demand still further explanations to maintain their rigid, awkwardly shaped boundaries.

It is therefore a criterion of a concept's value that it announces its heuristic character, that it declares itself to be an image or a metaphor, thus repelling reification, conceptual coagulation, and overinterpretation. This is partially achieved by the mere novelty of the alternative, its separation from a culturally embedded intellectual tradition. Beyond this, metaphors concede their heuristic character when they are relatively dull and unimaginative, when they lack the vividness that makes them seem like real entities. Thus, a collateral advantage of the commercial and mechanistic metaphors that will be offered in this book, in addition to their modern character, is that they are sufficiently mundane to discourage reification. They present themselves as convenient ways of thinking about complex relationships, and nothing more.

The problem of overinterpretation can be further minimized by employing heuristics that are not only uninteresting, but also uninformative and naive. While neither un informativeness nor naivete is generally regarded as a conceptual virtue, they serve as methods of self-restraint, reminders to proceed with caution in the explanatory process. An uninformative category is one that uses its distinctive term as a placeholder, rather than attempting to define it. The more informative and sophisticated the definition, and the more pre-analytic assertions it incorporates, the greater the danger of overinterpretation; the weaker and more uninformative the term, the more it serves to simply demarcate the subject matter of the particular analysis, and the less overinterpretation it involves. Heuristics whose

boundaries are demarcated by uninformative categories are less likely to be regarded as naturally occurring entities.

A naive heuristic is one that relies on ordinary language, more specifically the language used by the participants in the activity under discussion. This does not preclude the invocation of specialized theories of human behavior, but it demands that such theories be specifically introduced and justified, rather than serving as a starting point for the analysis. What will tend to be precluded are false consciousness arguments, that is, claims that social actors are deluded about their own genuine interest and advantage. Such assertions stray too far from naive, uninformative categories, and indulge in excessive overinterpretation. Once an observer is unencumbered by his subjects' own identification of their interests, he is unlikely to discern those interests accurately and much more likely to project his own predilections onto them through the interpretive process.

While the danger of reification suggests that bracketing familiar terms, and replacing them with more modern alternatives, will always be conceptually advantageous, the virtue of naive heuristics suggests an exactly opposite approach. In a field such as politics, existing concepts, precisely because they are existing, are the ones that social actors employ to characterize their own behavior. The conceptual coagulation that characterizes many of these concepts may encumber them with multiple meanings and uncertain boundaries, but it also provides a continuity and emotive depth that encourages their use. When scholars, policy analysts, or judges share that usage, they are taking the actors' explanation of their behavior at face value; when they impose new concepts, they run the risk of overinterpretation. It is certainly invigorating to recharacterize social behavior in terms that dissolve existing concepts, scrape away the past's encrusted sediments, and advance into a new clear space that stands at some remove from ordinary language. Having done so, however, there is nothing to stop the scholar from drifting off into the speculative stratosphere of overinterpretation.

One way to avoid this difficulty is to replace the existing concepts that have been bracketed with naive alternatives, that is, equally familiar ones from other contexts. Such familiarity provides some assurance that the new concepts are also ones that social actors use and understand. Naive alternatives that serve this purpose are often available because ordinary discourse is complex, containing many different strands that are separated for some purposes and combined for others. In fact, if one chooses sufficiently familiar concepts, it may turn out that social actors sometimes think about the particular subject in those terms, even if they ordinarily use the more traditional, historically sedimented ones. It may even turn out that the traditional concepts are invoked in public settings because of their historical associations, but that other concepts are used more frequently for daily problem solving. That is another reason why the alternative descriptions

offered in this book are drawn from our contemporary experience in business and technology.

The third criterion is that alternative concepts for describing government can be regarded as preferable to the existing ones if they provide the framework for a mode of explanation that will be described in this book as microanalysis.⁸⁰ A study of modern government is necessarily concerned with institutions. The microanalysis of institutions attempts to trace the actual pathways of individual decision making and related action through an institutional structure. Abjuring generalizations and attributions of behavior to the institution as a whole, it begins with individuals, identifying their specific actions that are relevant to the subject under study. It describes these actions in terms of the individuals' actual positions in the institution—their assigned tasks, the scope of their authority, the forces acting on them, the information that is available to them, and the consequences of their actions. In assessing individuals' response to their position, it avoids highly contestable claims about their motivations, such as the claim that they are entirely rational or that they are not rational at all. Rather, it acknowledges that people act from a mixture of rationality and irrationality, self-interest and altruism, ideology and convention. Its only strong assertion is that this mixture also includes the phenomenologically derived motivation that people desire to create meaning for themselves, and will sometimes sacrifice other values in pursuit of this objective.

The microanalytic approach to institutions offers a solution to the famous macro-micro problem that has long bedeviled social science, that is, the problem of creating explanatory linkages between individual action and collective behavior.⁸¹ Microanalysis begins from the premise of methodological individualism but recognizes the existence of emergent institutional behavior. It acknowledges that some emergent institutional behaviors arise because similar forces act upon each separate individual, just as rational actor theory claims. But it also suggests that other behaviors arise from the ideological, conventional, and ritualized beliefs that are intersubjectively communicated to individuals by others in the institution, and then expressed through coordinated action. In addition, individuals' desire to achieve meaning, their need for belonging and a sense that they are doing something useful, often leads them to act on the institution's behalf, and to think in institutionally established ways, even absent any conscious effort at coordination.

Normative Considerations

The methodology suggested above is not intended as an intellectual game, but as a means of improving our understanding of the government we actually possess, and thereby increasing our ability to improve that govern-

ment itself. From this perspective, the methodology may raise several normative concerns that are important to address: first, that developing more accurate descriptions of government only reinforces the status quo and forecloses comprehensive criticisms; second, that such improved descriptions are purely verbal changes, with no normative significance; third, that inherited concepts protect important underlying values that would be endangered by their suspension, even as a thought experiment; and fourth, that the particular alternatives suggested create a mechanistic, technocratic image of government that ignores important values. These objections will be considered in turn.

Of these normative concerns, the first must be partially conceded. This book does not offer any general critique of the administrative state; its premise, rather, is that the essentially administrative character of the modern state is irreversible.⁸² Many modifications are possible within that basic framework; certain functions can be privatized,⁸³ the level of regulation can be altered,⁸⁴ and command and control regulation can be replaced by more flexible modalities,⁸⁵ but none of these will alter the state's basic character. To recommend that we abandon the administrative state in its entirety is so unrealistic a proposal that it can only be saved from risible irrelevance by being treated as a dramatic way of stating more delimited critiques. The same may be said for the recently fashionable position that globalization will make the nation-state irrelevant. While there is much evidence for globalization, there is little indication that it is producing this effect. Moreover, as Philip Bobbitt suggests, even if the nation-state is replaced by other forms of governance, these novel structures are likely to be as administrative as their predecessor.⁸⁶ This concession to brute reality, however, does not preclude less sweeping criticisms. In fact, a better understanding of the government we actually possess serves as a useful predicate to either condemnation of specific practices or constructive recommendations for reform. Certainly, the vast range of existing practices and possible alternatives that exists within the ambit of administrative government allows ample room for wide-ranging normative debate. The proposed methodology thus accommodates condemnations and recommendations that are as comprehensive as the critic chooses, so long as they do not rise to attacks on the administrative state in its entirety. Administrative governance represents the horizon of our present political experience,⁸⁷ and genuine efforts to attack or improve our government, as opposed to self-indulgent ululations of social nostalgia, can be formulated only within its extensive, albeit finite confines.

The benefits of improved understanding for normative discourse serves as a response to the second concern as well. This study, while primarily descriptive, is not designed to purify our language, but to formulate usable and productive ways for thinking about our collective enterprise of gover-

nance. Because our theories are socially constructed, description and prescription are not the mutually exclusive modalities of Humean epistemology. Rather, they are permeable categories, different styles of analysis that serve related purposes. Descriptions are inevitably committed descriptions. They are motivated by our emotional commitments because we will choose to describe only those things about which we care, and they are controlled by our culturally contingent vision of the world. Thus, the effort to describe our government simultaneously implies, at the very least, a potential strategy for improving it—indeed, even the effort to describe past governments is often motivated by a desire to improve the present one. Conversely, prescriptions, at least in scholarship, are not merely declarations of the author's will but possess a cognitive component because they engage our commitments and provide insights about the subject matter they attempt to alter. Thus, a prescription is often an effective way to describe a given situation; by recommending improvements in a statute, for example, the scholar develops and communicates a deeper understanding of the statute's present character. This latter point is related to Weber's insight that understanding, or *verstehen*, in the human sciences at least, cannot be achieved by distant observation, but requires participation in the subject matter.⁸⁸

The third objection to the approach adopted in this study is that familiar concepts such as democracy, law, and rights may provide rhetorical bulwarks for values with which they have been traditionally associated, values that would otherwise be open to assault. To bracket them, even as a thought experiment, thus threatens to undermine their continued vitality. It is all very well to say that scholars or policy analysts could achieve greater understanding of modern government if they replaced existing concepts with novel ones. But suppose political participants undertook a similar thought experiment, or were otherwise convinced by the thought experiment undertaken by observers. Would this create a risk that these participants, having been convinced that the historically sedimented concepts connected with our cherished values are analytically unsound, would then reject the values themselves? Would it therefore be preferable to leave our familiar concepts undisturbed?

This is essentially an argument for continued mystification of political actors, and there are at least two serious difficulties with it. First, it is inherently retrograde, because any social concept, no matter how detrimental, possesses some connection to other concepts that we deem desirable. If this becomes an argument for the concept's retention, then we have forbidden conceptual developments in our theory of government. The fear that we will throw out the baby with the bathwater can ultimately leave us waist-deep, at the very least, in dirty bathwater, probably a much greater risk than the risk that we will actually discard a baby. Second, at the epistemological

level, deciding to purposefully mystify another person for that person's own good implies that one is much more knowledgeable or mature than that other person. It is a stance that adults often take toward children, or that therapists take toward the disturbed. But why is a scholar or policy analyst justified in treating political participants in this fashion? In most cases, the participants are just as intelligent, just as knowledgeable, and just as concerned about genuine social values. There is no obvious reason to believe that they will become so confused by reconceptualization that they will succumb to arguments that undermine their basic commitments.

Finally, it might be objected that microanalysis has a tendency to sound mechanistic and inhuman, particularly since business and engineering concepts will be invoked in this study to facilitate its application. But it must be recalled that one of the core premises of microanalysis is that individuals are motivated by a multitude of different desires, including the desire to create meaning, that they are thinking individuals, not bundles of self-interest or cogs in a machine. The mechanistic character of the analysis that will be presented in this book comes from another source—the effort to bracket the familiar terminology of government. This effort has a mechanistic or inhuman quality because it reflects the transition to a modern administrative state, a transition, it must be admitted, where something genuine and appealing has been lost. Small towns that governed themselves possessed a true integrity, a sense of homey coherence that was lost when they were ripped apart by freeways, strip malls, and telecommunication networks. The literate and lively political debate of coffee houses and town councils was truly more engaging than the radio talk shows, sound bites, and staged interviews that have replaced it. And to go further back, and deeper down, a reigning monarch can confer a sense of temporal redemption on a government official or a private person that is simply not available in contemporary times. It is nice to get a letter, or an appointment, from the president, but to be recognized, trusted, or commended by a king is an infinitely more profound experience. The intensity of that experience is reflected in the literature and fairy tales of our predecessor eras, and exercises a continuing if dimly felt appeal to the present day.

But no matter how appealing the world that we have lost, the point is that we have lost it, and it cannot be retrieved. To mourn is one thing, but to immolate ourselves upon our sorrow is another thing entirely. It is not only impractical, but ultimately unrewarding. A revival of the past is not the past itself; what was beautiful in its original and genuine existence becomes monstrous when one attempts to bring it back to life. Many horror movies are based on this principle. Robert Musil depicts a related horror in *A Man without Qualities*, set in 1913, when he describes the home of Paul Arnheim, a Prussian plutocrat. Arnheim, who turns out to be Jewish, has a room filled with Baroque and Gothic sculpture:

As it happens, the Catholic Church (for which Arnheim had a great love) depicts its saints and standard-bearers of Goodness mostly in poses of joy, even ecstasy. Here were saints dying in all kinds of postures, with the soul wringing out of the body as if it were squeezing water out of a piece of laundry. All those gestures of arms crossed like sabers, of twisted necks, taken from their original surroundings and brought together in an alien space, gave the impression of a catacombs' ward in a lunatic asylum. . . . [Arnheim] felt how morality had once glowed with an ineffable fire, but now even a mind like his could do no more than stare into the burned-out clinkers.⁸⁹

The Administrative State

Defining the Administrative State

Having stated the thesis and the method, one final requirement before proceeding is to clarify the empirical claim on which the thesis depends in its entirety, namely, the claim that our society has experienced a qualitative change in government, a change so profound that it renders many of our well-established, treasured concepts obsolete. Like Twain's Connecticut Yankee, who began by building a railroad from Camelot to London and introducing other modern conveniences, and ended up using the technology he introduced to slaughter all the knights of England, the administrative state has annihilated its predecessor.⁹⁰ But what was the precise nature of this change, and when, precisely, did it occur? It has been argued above that administrative governmental mechanisms began to evolve during the Middle Ages, and were sufficiently prominent at that time to produce the abreaction of Arthurian fantasy. In what sense, then, can the administrative state be treated as a subsequent development? And how can our current circumstances demand a reconceptualization of government and law that would not have been necessary during the earlier centuries when the administrative state was taking shape?

Obviously, there was no day or year or decade when government suddenly and definitively became administrative. One way to reconcile this observation with the claim of qualitative change is to identify continuous trends, acting over long periods of time, whose cumulative effects produce a palpable change at some defined and delimited juncture. As the homespun image of the straw that broke the camel's back suggests, decisive moments do occur, but they are made decisive by the process that preceded them and the events that follow, just as the significance of the crucial straw is not attributable to any of its inherent features, but only to its impact on the unfortunate ungulate. Following Thomas Schelling, this process may be described as a tipping trend.⁹¹ The trend operates, in some defined direction, over an extended period, but at some point, when it becomes

more dominant than the counterbalancing or predecessor tendencies, a qualitative change can be discerned.

The idea that contemporary government is administrative, and for that reason qualitatively different from its predecessors, is a central tenet of Max Weber's sociology. Weber uses the term bureaucracy, for which he offers two separate definitions. The first is that bureaucracy is characteristic of the rational, or rational-legalistic mode of legitimate domination.⁹² Rational behavior, according to Weber, occurs when an actor chooses strategic means, based on natural events or human behavior, that will best achieve an objective that actor judges to be in his own self-interest.⁹³ Legalism is "a consistent system of abstract rules which have normally been intentionally established."⁹⁴ Weber's second definition consists of a list of characteristics, many of them quite precise, that the typical bureaucracy displays.⁹⁵ The primary ones are a continuously operating set of agencies with defined areas of jurisdiction and defined authority within each area, a clearly established hierarchy of offices within the agency, generally dependent on a single chief administrator, a management system based on written documents "preserved in their original or draft form," and a staff of officials who work full-time for their agency, are paid fixed salaries rather than receiving property, privileges, or fees, possess specialized training, and are selected on the basis of their credentials.⁹⁶ Bureaucracy, in Weber's view, is technically superior to any other form of organization: "Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs—these are raised to the optimum point in the strictly bureaucratic administration."⁹⁷

Although Weber's account of bureaucracy is seminal, his particular definitions present difficulties that are best avoided. The claim that bureaucracy is a rational-legal mode of governance involves two terms that are freighted with innumerable controversies. Rationality is one of the most contested concepts of modern times; for some, it implicates collective aspirations for objective truth or social emancipation, while others regard it as the essence of Eurocentric oppression of the third world or the human spirit. Even worse, it serves as the basis of microeconomic analysis, which has attempted to lay claim or lay waste to such disparate fields as law, political science, and sociology, and has become the subject of raging academic battles in every one of them.⁹⁸ The concept of legality is almost equally contested, having been the focal point of jurisprudential debate for at least two centuries. In fact, it is so encumbered with inherited and supernumerary connotations that it is one of the concepts that will be bracketed in a later chapter of this book. Weber's second definition, although free of such contested concepts, suffers from the opposite problem of being undertheorized and overly precise. As frequently observed, it bears

the imprint of the managerial theories of Weber's day about the most efficient way to design an organization,⁹⁹ and only poorly describes more contemporary developments such as Post-Fordism, New Public Governance, or New Public Management.¹⁰⁰ Beyond these difficulties with his specific definitions lie two more general ones. The very term 'bureaucracy,' although simply a French-language synecdoche for the *bureau*, or desk, where public officials worked, was an insult from its outset in the eighteenth century, and has only become more of an imprecation over time.¹⁰¹ In addition, Weber's definition of bureaucracy relies on his notion of ideal types, and is thus purposefully ahistorical.¹⁰² While this methodology enables him to generate tremendous insights, its brightly delineated categories consciously ignore the jumbled process of transition; we never learn, for example, precisely when the predominantly bureaucratic state came into being.

For all these reasons, it would appear that Weber's definition, and indeed, the terms 'bureaucracy' and 'bureaucratization' themselves are best avoided in a study that attempts to recharacterize our concepts of government in a modern administrative state. Instead, we need more uninformative terminology that makes fewer assertions, raises fewer hackles, and can be applied to what has been called a tipping trend. Modernization theory may seem like a promising source.¹⁰³ Samuel Huntington, for example, identifies three components of the modernization process: the differentiation of structure, the rationalization of authority, and the expansion of political participation.¹⁰⁴ Participation, however important, hardly seems to be a defining feature of the process. The first two are more basic, but they are virtually restatements of Weber's theory of bureaucracy in dynamic or teleological terms and present many of the same problems. They are complex concepts that have reverberated through the entire corpus of social and political theory, creating various echoes, static, and noise along the way. Differentiation implies the specialization or division of labor, which is linked to pre-analytic notions about the loss of community and the oppression of industrial workers, while 'rationalization' is simply another form of rationality.

The term that will be used in this book for the tipping trend that produced a qualitative change in Western governance is 'articulation.' One of the ordinary meanings of this word is the connection of discrete elements by visible ligatures or joints in a manner that preserves their separate identities; another is the expression of something in explicit verbal form. Both usages are found in contemporary scholarship; the first is one of the images employed in Deleuze and Guattari's *A Thousand Plateaus*,¹⁰⁵ while the second figures prominently in Derrida's *Of Grammatology*¹⁰⁶ and Polanyi's *Personal Knowledge*.¹⁰⁷ Despite its familiarity, the term has not acquired any strong connotations, and is thus bland enough to describe

long-term trends in governance without implying any controversial normative claims or asserting any unsubstantiated empirical ones. Thus, the first meaning of articulation—to connect discrete elements—will be used in place of Huntington's idea of differentiation or Weber's list of characteristics, and will be called the articulation of structure. The second meaning—to express something in coherent verbal form—will be used in place of rationality or rationalization, and will be called the articulation of purpose. These two uses of this relatively bland term are sufficient to distinguish between the administrative and the pre-administrative state. To state the matter more precisely, a continuing process in Western society reached its tipping point when both the structure and the purpose of the state became predominantly articulated, and this tipping point represents the transition to a mode of governance that we recognize as distinctively administrative. Any implications of this process, such as whether it produces a state that is more differentiated, more rational, more open to participation, or more destructive of the human soul, must be argued for rather than assumed or insinuated by virtue of a definition.

The Articulation of Structure and Purpose

Both uses of the term 'articulation' need to be elaborated in a bit more detail. To begin with the articulation of structure, there has been a gradual development, throughout the past millennium, of the *bureau* after which bureaucracy was named, that is, the desk-filled office of government agents performing a specific task. At the beginning of this process, government was generally not organized into the specialized ministries or agencies that seem so characteristic of the modern state. Officials often had their own job assignments, to be sure, but rather than being members of an agency, they also had their own personally hired staff, their own source of revenue, and their own physical location.¹⁰⁸ The tax collector bought his position for a lump sum, hired whom he chose, and kept what he collected; the clerk was responsible for issuing all the licenses for marriage, or the importation of goods, or the operation of hackney coaches in a given area, and received a fee for each license he issued; the military officer raised and provisioned his own regiment, again for a fee, even though the soldiers then fought under a unified command. These positions were essentially little self-contained institutions of their own and resembled medieval fiefs, rather than components of an administrative hierarchy. Being private property, they could be bequeathed and inherited, or bought and sold, like landed estates. Baron Montesquieu, for example, inherited the presidency of the Bordeaux *Parlement* from his uncle and sold it for a substantial sum when he decided to live a more fashionable life in Paris.¹⁰⁹ And just as the owner of landed property was free to hire someone else to man-

age his estate, paying a fixed salary and retaining the remainder, office-holders could appoint a salaried deputy to fulfill their office's responsibilities, while retaining its emoluments. In England during the 1780s, the King's Remembrancer paid £1500 to his deputy and retained £991, while the Exchequer's Clerk of the Pipe paid £100 to his deputy and retained £720.¹¹⁰

The self-contained character of government offices contrasted with the fluidity of the structure in which these offices existed. The king's personal household merged imperceptibly into the general government, so that, in England, the Master of the Horse or the Lord Chamberlain were regarded as equivalent positions to the Lord High Chancellor or the Secretary of State.¹¹¹ The Church merged into the state, so that acting clerics like Richelieu, Mazarin, or Wolsey could simultaneously serve as the king's chief minister, while the right to appoint abbots and priests was as central to royal authority as the right to appoint ministers and military officers. Of course, private affairs merged into public affairs; great lords with no official position often controlled the central government the way elected representatives or appointed ministers do today, and the king governed through these great lords as much as through his own officials.¹¹² Specially appointed royal officers were often reabsorbed into the locally-based nobility, as occurred with France's *noblesse de la robe*.¹¹³

In a contemporary administrative state, the semi-independent officials of pre-modern times have been replaced by employees whose positions are defined as interlocking parts of a hierarchically organized ministry or agency. As Weber points out, and as modernization theorists emphasize, these employees are not remunerated with fees, but with a prescribed salary; their responsibilities and relationships with one another are fixed by the hierarchic structure, and their performance is monitored and evaluated by their superiors within the hierarchy.¹¹⁴ These ministries or agencies, moreover, are themselves articulated. They are conceived as separate entities within a clearly delineated public or governmental realm, and their internal hierarchy is independent of the status hierarchy that prevails in society at large. Their boundaries tend to be fixed, rather than fluid, and their relations with other ministries or agencies is defined by elaborate rules that create a larger and equally articulated hierarchy.

A second millennium-long trend in the governance of Western society is the articulation of purpose. In the medieval era, government was not conceived as implementing specified goals or purposes. Most of the mechanisms by which society was governed relied on what Weber described as traditional modes of domination.¹¹⁵ Their authority was ascribed to some force that ran back into the misty past, or up into the heavens, but certainly beyond the reach of existing temporal decision makers.¹¹⁶ The leaders of the government, everyone recognized, could make war and peace,

collect taxes, dispense benefits, and impose sanctions, but they were not regarded as having the power to issue basic laws regulating ordinary social or economic relations. These laws were regarded as transcendent, and the task of government decision makers was to discover, interpret, and enforce them. Thus all government officials were seen as fulfilling what we now describe as a judicial role.¹¹⁷

This conception of government may be described as sacerdotal, in that the ruler was supposed to mediate between the divine and human worlds. To some extent, it was the sedimented belief of an earlier pre-Christian era, when the purpose of human life was seen as serving a divine ruler or the gods whom a divinely ordained ruler represented. By the Middle Ages this belief's remaining force was animating people's attitudes toward the Church, not toward the government. In the political realm the dominant view was that the people constituted an end in themselves, and the role of government was to benefit them and serve their needs. This was clearly stated by John of Salisbury, generally regarded as the West's first political theorist,¹¹⁸ and strongly championed by many others, including Dante.¹¹⁹ But medieval people also believed in an unquestioned supernatural order, and it was in this realm that their most important benefits, most notably salvation, were to be obtained. The governments of the time were considered just, or moral, to the extent that they could confer benefits flowing from this supernatural realm upon their people—hence their sacerdotal character.

In order to mediate between the divine and human worlds, and thereby facilitate the salvation of its subjects, a government needed to partake of each world's nature. This is the image of Moses, who spoke to God and man, of Jesus, who was both God and man, and of Arthur, a secular, non-priestly ruler who was infused with divine grace. The ruler, typically the king, was regarded as chosen by God and as exercising his authority with God's approval. Thus, the mystic force of justified power, or legitimacy, flowed from God into the sovereign and thenceforth out into the expressions of the sovereign's power—his subordinates, the law, and the legal rights that law created. Because its origins were divine, this force had always functioned in this manner; thus tradition—the way things had been done in the past—possessed the same sacerdotal character. It deserved respect because it embodied the collective experience of prior eras, but it was the sacerdotal element itself that supplied its moral status.¹²⁰

In the contemporary view, government traces its authority to some explicitly established ordering that has been declared by a particular ruler, or, more commonly these days, established by a written constitution. Government decision makers create the laws that regulate the relationships among the citizens in exactly the same sense that they make war, raise taxes, or confer benefits. As such, they are comprehensive policy makers,

carrying out explicitly identified purposes, not adjudicators or interpreters. There remains, of course, the need for the judicial function of interpreting the laws, but the laws are regarded as humanly created products, and the task of interpretation is to identify the intention or purpose of their human originators.¹²¹

The subtraction of the transcendental realm from political debate has led to a reinterpretation of the moral purposes of government. While the idea of glorifying or propitiating God no longer makes sense, the idea that government should benefit the people remains entirely applicable; indeed, as stated above, it serves as the moral premise of this study. But benefit is no longer defined in supernatural terms; rather it refers to purely secular advantages, not necessarily material, but almost exclusively identified with the welfare of individuals, specifically their security, liberty, and prosperity. Government is thus regarded as an instrumentality, a mechanism for providing secular benefits for those who live under its control. This is sometimes described as the eudaemonic state, the state whose purpose is to maximize the personal happiness of its members. It is not quite the same as a utilitarian approach to government, since it does not specify how happiness is to be measured or aggregated with as much precision, but it can fairly be described as the related political philosophy of welfare consequentialism.¹²² What is important, for present purposes, is that government is regarded as fulfilling explicit, or articulated purposes, defined by a secular process of some sort.

Shifting to an instrumental conception of the state is not the thoughtless, mechanistic tropism of contemporary Morlocks who have forgotten the meaning of morality. Rather, it is a morality of its own. The idea that government should be a pure instrumentality, an entity that possesses no independent moral force, and should be judged according to its ability to benefit the people, is an organizing moral principle. This does not mean, of course, that every actual administrative state is necessarily a moral one. Rather, it suggests that the conception of an instrumental administrative state provides us with the criteria we use in contemporary society to make political judgments. Hitler's Germany, an administrative state, is something we deplore, but it is our morality—a morality that has evolved in an administrative context—that forms the basis of our judgment. Thus, recognition of the new political morality does not preclude condemnation of any particular administrative state; what it does preclude is a condemnation of a modern administrative state simply because it is administrative, or instrumentally conceived, and does not fit the model of its sacerdotal predecessor.

The two types of articulation that have been identified—structural and purposive—may seem like separate concepts, linked only by an adventitious overlap of English words. But, without adopting the Heideggerian

conceit that language itself whispers secret verities in our ears, it can nonetheless be suggested that this linguistic correspondence reveals a more substantive relationship—the co-causal interaction of structure and intention. Structures of government affect the way that people think, and the way they think in turn affects those structures. In the case of the administrative state, the articulation of government into functionally defined and hierarchically integrated agencies naturally contributed to articulating the specific purpose of those agencies, while the recognition of such purposes enabled people to reorganize the government along more functional, articulated lines.

The Advent of the Administrative State

If this dual meaning of articulation is an accurate description of the two trends that generated the contemporary administrative state, it should be possible to use this term to locate these two trends' tipping points in historical time. The general consensus among scholars who have addressed this question, after Weber left it unresolved, is that the transition occurred during the last quarter of the eighteenth century and the first quarter of the nineteenth century.¹²³ In fact, articulation of structure and articulation of purpose turn out to be effective descriptions of developments in governance during this critical half-century.

With respect to structure, two great transitions occurred during this period. First, the overlap of public offices with private property, and of public officials with the land-owning nobility, was replaced by salaried, non-hereditary positions that were not conceived as property, and certainly not as nobility. Second, the quasi-independent, traditionally established government agencies were reconfigured into interconnected, functionally defined institutions. These transitions occurred throughout Europe, but can be illustrated by events in France and England.

Prior to the Revolution, French civil and military administration displayed the typical pre-modern pattern of self-contained and quasi-independent offices, even though Louis XIV had worked so hard to fill these offices with non-noble occupants. The French crown's practice of selling offices to raise money, and then demanding an annual fee from the officeholder, quickly transformed appointed positions into private property and their occupants into a new but nonetheless hereditary nobility, the *noblesse de la robe*.¹²⁴ Between 1789 and 1793, however, the Revolutionary government instituted salaries, pensions, and a fixed chain of command to replace the fees and favors that had previously constituted the primary compensation for so many government positions. The individuals who previously held these positions were purged. The Convention asked each existing ministry to submit lists of all their members, partially to facilitate the purges, but

also to establish the staff members' status as salaried officials, answerable to the central government.¹²⁵ To further reduce the independence of the administrators, special committees were set up to oversee their efforts; at one point, the Committee of Public Safety had a substantial staff divided into sections for monitoring each of the ministries.¹²⁶ The general conscription eliminated privately raised regiments, and a state-run distribution system replaced the private contracts for military supply.¹²⁷

The Revolution also reorganized the government, dividing it into separate, clearly defined units. During the last decades of the *ancien régime*, major administrative functions had been parceled out among four secretaries of state and the *Contrôle Général*.¹²⁸ Attempted reforms yielded equally irregular alignments; Bertin's department, for example, which was specially organized to take advantage of his economic talents, was responsible for agriculture, mining, postal communications, provincial affairs, secretarial matters, and stud farms.¹²⁹ The largest unit in the government was the *Contrôle Général*, which Clive Church describes as "a rambling agglomeration of commissions, services, semi-independent functionaries, and others, all held more or less together by a small and still very personal team of clerks."¹³⁰ Many public functions were performed by the *Maison du Roi*, which was responsible for running the king's household.¹³¹ The revolutionaries abolished the *Contrôle Général* and distributed its component parts among different agencies. They transformed the *Maison du Roi* into the Ministry of the Interior, with responsibility for the king's household first confined to a single section, and later abolished together with the king. By spring of 1791, the Convention had passed an organic statute that stated each ministry's responsibilities; by 1792, the ministries had acquired a distinctively contemporary structure, being divided into Foreign Affairs, War, Navy, Interior, Justice, and Finance, and subdivided into a number of functionally defined bureaus, usually five or six.¹³²

England was well past its revolutionary phase by the last quarter of the eighteenth century, and had entered into its long-lasting era of stable parliamentary government. Nonetheless, it went through a rather similar process of articulating its administrative structure. Beginning in 1782, permission to exercise one's office through a deputy was gradually withdrawn. Numerous laws were passed during the 1780s and 1790s to eliminate offices that drew their income from fees, or to replace those fees with salaries and pensions.¹³³ When Parliament failed to enact one such law, Pitt implemented its provisions, to the extent possible, by executive action.¹³⁴ Lacking the convenience of a revolution, the English reforms had to proceed more slowly than the French. The offices were regarded as private property, and Parliament could not simply abolish them or displace the current officeholder. In some cases, therefore, the officeholder was bought out with an annuity. This could be expensive; the two Auditors of

the Imprests were each paid £7,000 a year for life when their offices were abolished in 1785.¹³⁵ In other cases, the office was simply allowed to lapse upon the death of the holder. Although relatively lengthy, the process had become government policy by the 1790s, and was essentially complete by the 1820s. The last Teller of the Receipt to be paid by fees, Lord Camden, held his office until 1834, but he was clearly an anachronism by that time, something he acknowledged by relinquishing the bulk of the fees to which he was entitled.¹³⁶

The positions that were thus freed from their quasi-independent status were combined, as in France, into ministries and subministries with functionally defined responsibilities. Prior to 1782, for example, there were two secretaries of state. They had originally been the king's personal secretaries, but their responsibility for use of the signet had gradually involved them in a wide range of public affairs. By the eighteenth century, they were jointly responsible for domestic matters, one for northern England and the other for southern England, and divided foreign affairs between them on a rather loopy geographic basis, the Northern Secretary handling relations with northern European nations and with Scotland, the Southern Secretary handling southern Europe and, until 1762, North America. In 1782, Parliament separated their functions, making one the Home Secretary, with jurisdiction over domestic affairs, and the other the Foreign Secretary. The Home Secretary continued to be responsible for both war and the colonies until 1801, when a separate War Secretary was established.¹³⁷

A related change was the creation of a Consolidated Fund in 1787 to replace England's complex system of special taxes with a unified account. Partial merger of the seven revenue boards that were responsible for collecting specified taxes was proposed as early as 1781, and the idea began to be implemented in 1798. It was not completed, however, until the formation of the Board of Inland Revenue in 1849, a quarter-century past the period in question. Similarly, the Parliamentary allocation to the king for his personal expenses, the Civil List, was also the source of salaries and pensions for many high officials. An Act of 1782 imposed some fiscal discipline on these expenditures, and complete separation between the personal expenses of the monarch and the expenses of the civil government was finally achieved in 1831.¹³⁸

The same half-century also saw the purposes of government become articulated; arguments from tradition were explicitly rejected and the idea that government is an instrumentality of consciously developed social policy took hold. This process can be illustrated in the areas of public ideology, law, and, somewhat surprisingly, traditionalism itself. With respect to public ideology, France once again provides the most dramatic illustration. The central tenet of the revolutionaries was the rejection of tradition, a visceral aversion for doing things the way they had been done before. They

not only abolished the privileges of nobility, but abolished the entire concept; they not only deposed the king, but beheaded him; they not only disestablished the Catholic Church but closed its facilities, seized its assets, and tried to replace it with a new religion. They divided and renamed France's ancient provinces, renumbered the years, changed the week from seven days to ten, renamed the months on the basis of the weather, and, most bizarre of all, invented a new system of weights and measures based on the quadrant of the Earth's circumference.¹³⁹

Amid all this institutional carnage, the revolutionaries also developed a positive theory of government. Government, they believed, was not supposed to preserve tradition or the status quo, but to secure the happiness of all in the most logical and efficient manner. The Convention's organic statute was designed to transform administration into an instrument of public policy, as was the Committee on Public Safety's organized supervision of the ministries.¹⁴⁰ It was as characteristic of the Convention to proceed by statute as it was characteristic of the Committee to proceed by terror-backed surveillance, but both were seeking mechanisms to articulate the purposes of government. However far this effort proceeded during the tumultuous years of the Revolution, there can be no doubt that it was essentially completed by Napoleon,¹⁴¹ which places the transformation securely within the same fifty-year period.

Once again, events in France may seem too dramatic to be generalized, as much a product of the Louis XVI's fecklessness and the frenzy of the *sans-culottes* as the tipping point in a thousand-year-long trend. But a very similar process occurred in other European countries. Perhaps the most intriguing case is Habsburg Austria, the archenemy of the French Revolution. During the decade prior to the Revolution, the Austrian emperor was Joseph II. The eldest son of Maria Theresa, Joseph had grown up chafing under his long-lived, devout, domineering mother, and ascended to the throne in 1780 determined to carry out his own ideas as rapidly as possible.¹⁴² Although a member of one of Europe's most ancient and traditionalist families, he explicitly conceived his program as the extirpation of tradition.¹⁴³ He was content to retain the names of the months and the numbers of the years but he tried to abolish many of the privileges of the nobility. All positions in the government were to be based on merit, educational academies were to be open to worthy students of any background, and criminal justice was to be administered without regard to rank. He closed the monasteries and secularized their property, using it to pay pensions to the displaced monks and nuns, but also to establish educational and charitable institutions.¹⁴⁴ He abolished serfdom, allowing the former serfs to marry at will, choose a profession, and substitute cash payments for their required work.

Government officials were forbidden to have outside occupations—

Joseph would have liked to forbid them from having outside interests—and guaranteed a pension after ten years of service to secure their economic independence. They were required to fill out a fifteen-item questionnaire every six months, stating their abilities, years of service, conduct, and accomplishments.¹⁴⁵ Proclamations, at a rate of more than seven times the number issued by his mother's government, poured forth from these officials, prescribing rules for virtually all aspects of social, economic, and religious affairs. A centralized police force was organized to monitor compliance with these orders, but also to monitor the provincial administrators and ensure that they were implementing the required policies.¹⁴⁶ All this was conceived by Joseph as a means of creating a rational, instrumental government that served the interests of the citizens. In a statement critiquing the status quo in his Hungarian possessions, he declared, quite independently of Bentham or the French Revolution, that the form of government "must be in accordance with the general good of the greatest number."¹⁴⁷

Like these changes in public ideology, the enactment of comprehensive legal codes between 1775 and 1825 also illustrates the articulation of purpose. These codes were designed to replace the mass of localized, customary provisions in each nation with a single, organized system that achieved the explicit purposes of government—the protection of property, the encouragement of trade, the suppression of crime, and, at least in some cases, the protection of human rights. The most influential, of course, was the Napoleonic Code of 1806.¹⁴⁸ Scholars have concluded that this was not the Newtonian reconceptualization that it purported to be, but a relatively conservative compromise between Roman and medieval law that consolidated several prior projects.¹⁴⁹ Nonetheless, the claims asserted on its behalf are significant, for they indicate a decisive watershed; legal rules were no longer to be justified by tradition but by logic, no longer celebrated because they were autochthonous and particularized, but because they implemented a nationwide regime of public order, commercial efficiency, and social justice. The Napoleonic Code was carried into Belgium, Poland, and the Rhineland principalities by the victorious French armies, and was voluntarily adopted by progressive regimes in Italy, Spain, Romania, and Argentina,¹⁵⁰ but its success does not represent the limit of legal articulation in this period. Prussia introduced a comprehensive legal code in 1794, after a period of development unrelated to the French Revolution.¹⁵¹ Joseph II, as might be expected, initiated a wide-ranging law reform project shortly after his accession, designed to abolish customary law and establish a new system based on general principles and devoted to achieving public purposes.¹⁵²

It might appear that England was an exception to this pattern, since it retained the common law over Bentham's strident call for codification.¹⁵³

But England's common law had been organized and systematized in 1776 by Blackstone's *Commentaries*, which presented it as a coherent system designed to achieve the recognized purposes of government.¹⁵⁴ Of course, the publication of a book is not necessarily a political event, but Blackstone's was no ordinary book. An immediate success, it won a central place on every English and American lawyer's shelf, where it was treated as the final word on the content and meaning of Anglo-American law.¹⁵⁵ Much of Bentham's fury sprang from his adversary's evident success in systematizing and justifying England's traditional legal system, thereby insulating it from more radical reform.¹⁵⁶

One final illustration of the late-eighteenth- and early-nineteenth-century articulation of purpose involves the reconceptualization of traditionalism itself by the enemies of reform and the defenders of religion—Burke, Herder, Maistre, and Bonald. In the aftermath of the Revolution, these thinkers found that the old order could no longer be defended simply because it was old, or because it was right, or because it was sanctioned by God. Instead, they argued that tradition and religion were necessary to secure social stability and to avoid a descent into sanguinary chaos.¹⁵⁷ In thus offering a nontraditional argument for tradition, they reflect the conceptual transition to the contemporary world of articulated policies.¹⁵⁸ Maistre, though a sincere Catholic, was so perspicacious in analyzing the social utility of religion that the founders of secular social science, Comte and Saint Simon, drew heavily upon his work.¹⁵⁹ Bonald, an equally passionate proponent of political conservatism and ultramontaniam, went still further, striving to justify his views by means of systematic, scientific analysis. This ultimately led him to propose a new set of rituals that were consciously designed to reinvigorate and improve those that the Revolution had displaced.¹⁶⁰ They included, as David Klinck describes, his Temple to Providence, a pyramid-shaped structure to be placed at France's geographic center and surrounded by statues of great public heroes. The Dauphin would live there, together with young nobles who had graduated from specially organized schools and wore gold rings betokening their status. Coronations, royal burials, and meetings of the Estates General would be held at the Temple, and the populace, having attended these august rituals, would return home inspired to maintain the status quo.¹⁶¹ One expects such elaborate, overheated fantasies from socialists like Fourier or Owen, but to find a Catholic conservative proposing rituals as radically new as Robespierre's Cult of the Supreme Being indicates how fully the defense of tradition had been reconceptualized.

There remains the case of the United States, which will be of central concern in this study. In some ways the United States was a full participant in the late-eighteenth-century transition to administrative government, and the clarity of the example it provided may rank along with the inven-

tion of the lightning rod as America's first contributions to Western culture. From its outset in 1789, the national government, with its separate departments of State, Treasury, War, and the Post Office, was as structurally articulated as any in Europe. Fee-supported sinecures, hereditary offices, and the welter of loosely and traditionally structured institutions that characterized pre-administrative Europe were entirely absent. Nor did American political leaders experience any difficulty in articulating the general purposes of government. Indeed, they did so at least as early as any European nation—if not in the Declaration of Independence, then certainly in the Constitution and the Federalist Papers. On the other hand, economic and social regulation in the United States evolved somewhat more slowly than in Europe, particularly at the national level.¹⁶² While the new nation quickly developed a postal system, land offices, a customs service, a standing army, and a navy, its skittishness about regulation¹⁶³ led to at least two major political decisions—the veto of the Second Bank of the United States and the ultimate rejection of Henry Clay's American System¹⁶⁴—and to at least one genuine social tragedy—the failure of the understaffed, underfunded Freedman's Bureau to enforce the rights of the former southern slaves during Reconstruction.¹⁶⁵

Stephen Skowronek attributes the delayed development of regulatory government in the United States to federalism, and to the small scale of the federal government during the antebellum era.¹⁶⁶ In addition, one can always invoke the Turner thesis,¹⁶⁷ which has the additional advantage of having been anticipated by Hegel,¹⁶⁸ or one can cite the lack of any serious military threat that demanded large, well-organized armed forces.¹⁶⁹ The question is certainly an interesting one, but of no great significance for present purposes. It is incontrovertible that the United States became an administrative state some time between its Revolution and the beginning of the twentieth century. That means that America's transition to administrative governance occurred after the concepts that will be bracketed in this study were developed and before the contemporary period when those concepts, despite their pre-modern origins, continue to be applied.¹⁷⁰

The thesis of this book can be elaborated once again in light of these considerations. The advent of the administrative state, resulting from the articulation of structure and purpose that reached their tipping points about two centuries ago, has rendered the concepts that we use to describe our government outdated. We retain these concepts due to social nostalgia; because they carry moral implications, however, we imagine that we retain them to provide criteria for evaluating our government. But our existing concepts are as outdated in the moral realm as they are in the descriptive one. They emerge from a sacerdotal conception of government that we no longer maintain, and that conflicts with our current view of government as instrumental, or eudaemonic. Consequently, we can ex-

press our moral values more clearly, and implement them more effectively, if we conduct the thought experiment of setting aside the pre-modern concepts that we currently employ, and replace them with more contemporary alternatives.

It can thus be said that the purpose of this book is moral as well as descriptive, but, in fact, these two purposes are inextricably connected. From the descriptive point of view, the concepts we have inherited from the sacerdotal state fail to describe our current moral attitudes, just as they fail to describe our government itself. They fail, moreover, in exactly the same way because the government that we possess is a product and a source of our morality. From the moral point of view, continued reliance on these concepts is a political wrong; it is wrong to misdescribe our government because we must understand that government if we want it to serve as a eudaemonic instrumentality, a means of providing us with desired benefits. It is our moral responsibility to squelch our social nostalgia, and come to terms with the government we actually possess, no matter how dreary its pragmatism seems, how painful the individual's apparent alienation from the collectivity may feel, how vast and grim modernity appears to be. For these are only moods, however deeply felt. In fact, the modern administrative state, in its articulation and its instrumentalism, is the way we take collective action to solve the enormous problems and achieve the even more enormous promises of modern life. As we advance into this new millennium, we need to reconcile ourselves to its existence, understand its underlying structure, and make it work.