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# Political Legitimacy and the Welfare State: Five Basic Models

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## **Electoral democracy, the welfare state and legitimacy**

The starting point for this article is a simple question, namely what makes a political system legitimate. The most widely accepted idea today gives an equally simple answer to this question, namely electoral-representative democracy (cf. Goodwin-Gill 2006). For example, one of the most respected scholars in this field of research, Guillermo O'Donnell, has recently argued that "across most of the globe today, the ultimate claim of a political regime to be legitimate - or at least acceptable - rests on the kind of popular consent that purportedly finds expression in the act of free voting" (O'Donnell 2007, p. 6). The main idea is that political legitimacy is created (or located) on the *input side* of the political system in that it serves as an effective form of interest articulation (Lewin 2007, p 56f). With electoral-representative democracy at least some approximation of the realization of "the will of the people" is thought to be carried out (Esaiasson 2003; Holmberg 1999b). In article 21 in the UN Declaration of Human Rights, this is stated as follows:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

From a welfare state perspective, the idea that electoral-representative democracy creates political legitimacy leads to a number of problems. The first one is that the modern welfare state is a huge and extremely differentiated enterprise. Many of the policies and program that it carries out and which are of direct and vital importance for the well-being of the individual citizen, has in reality very little connection to what takes place on the input side of the political system. Research about the problem of policy implementation has given ample empirical support for this claim that there is a "loose-coupling" between policy goals and practice at the stage of implementation (Saetren 2005). Secondly, research from one of the more advanced welfare states, namely Sweden, gives a puzzling result. On the one hand most welfare state programs have a strong popular support, especially the more universal programs (Svallfors 2003; Svallfors 2007). On the other hand, confidence in political parties and elected politicians has dropped dramatically (Holmberg 1999a). Thus, in Sweden, people support a large, costly and generous welfare state but not the political parties or politicians that provide

the “input” for the system. In a comparative analysis of Sweden, Germany, Australia and the US, Svallfors concludes that “national differences in political trust and efficacy do not contribute to an explanation of the considerable national differences found in support for welfare state interventions” (Svallfors 2002, p. 197). Moreover, from twenty yearly survey studies of the degree of confidence Swedish citizens have for various political institutions comes a truly puzzling result. The ones in which they can elect who governs them (the political parties, the unions, the EU-Parliament, the Swedish Parliament, the city councils, etc.) gets much lower ratings than the one in which citizens have no say about who wields power such as the public health care system, universities, the courts, the police and the social service (Holmberg and Weibull 2007). Thus, Swedish citizens have greater confidence in *appointed* power-holders of their welfare state (doctors, nurses, social insurance administrators, professors, judges, policemen) than they have in the ones they have elected.

Thirdly, it is difficult to find empirical support in qualitative analyses of policy processes for the argument that changes of the Swedish welfare state is driven by popular input through the representative system. On the contrary, many of the reform initiatives have been driven by political elites and experts or by neo-corporatist agreements between interest organizations and the state (Lewin 1992; Lundberg 2003; Westerståhl and Johansson 1985). This problem has certainly become more prominent with Sweden’s entrance into the European Union which in this respect is criticized for its “democratic deficit” (Scharpf 1999). Thus, we can conclude that the strong legitimacy for the welfare state in the Nordic countries must be explained by something else than the procedural logic of the electoral-representative democracy in these countries (cf. Mattei 2007). The purpose of this article is to present a theory and a typology of how legitimacy is created in the Scandinavian type welfare state.

### **Power and legitimacy: The case of Norway**

The need to find a source for the legitimacy of the welfare state outside representative democracy has recently been illustrated by a Norwegian research project. As its neighbouring Scandinavian countries, the Norwegian government has organized a type of mega social science research project about how well the country’s democracy is working. This research program have been led by three eminent political scientists, one sociologist and one researcher in cultural studies and engaged over a hundred scholars from a great variety of

disciplines not only in the social science but also from law and the humanities. Studies about almost every aspect one can think about in the Norwegian democracy were carried out between 1998 and 2003 in which year a final report was written by the scholars in charge of the program (for a thoughtful review see Ringen 2004). To state it mildly, this report gives a very bleak picture of how well the Norwegian democratic system works. Summarizing the main findings, the leaders of the program wrote as follows:

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

They also pointed to other ways in which the Norwegian representative democracy was “eroded”, for example that the parliament had lost power to market forces, that mass media had become more dominated by the logic of the market and that parties and other institutions for interest articulation (i.e., major nation-wide interest organizations) functioned less well and managed to recruit fewer members and activists (Selle and Østerud 2006). What is interesting from the idea that electoral democracy can create political legitimacy is the normative ideal on which the report (and the whole research program) was built. The research design of the program was that the many empirical studies (of almost every thinkable aspect of the workings of Norwegian democracy) should be evaluated against a normative ideal presented as the “parliamentary chain of government” (cf. Olsen 1992). This chain starts with the voters and ends with the political decisions that are being implemented and in between are all the institutions that form a representative parliamentary democracy (Christiansen and Tøgeby 2006). Given the harsh view of how the Norwegian democracy works, it is difficult to understand why its encompassing welfare state has such high levels strong popular support.

It should be added that problem with popular support for the system of representative democracy are not unique to the Scandinavian countries. The well-known paradox is that while electoral/representative democracy is hugely successful on the global level, especially considered the number of countries that have introduced (some variant) of this system and (not least) as a normative ideal, citizens who actually live in countries that practice the system are less and less satisfied with the actual workings of this system. Trust in central political

institutions in the electoral/ representative democracy (parties, parliaments, politicians, local governments), seem to be down in most established democracies (Dogan 2005; Pharr and Putnam 2000). What makes the Scandinavian countries interesting is the co-existence of high popular support for their very ambitious and encompassing welfare states (i.e., the output-side) and the apparently lack of legitimacy for the “input-side” of the democratic machinery. Thus, we need a theory that can explain how such a large (and costly) output side can achieve legitimacy among a majority of citizens who at the same time distrust their elected representatives to such a high degree.

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

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

#### *Administration and Legitimacy*

In most modern welfare states, citizens today are born, grow up, and die under the aegis of the state. Robert Dahl type of democratic theory sees public undertakings in such areas as legitimate so long as the decisions establishing them are taken in a procedurally correct manner. It is the democratic decision-making process - in which all citizens possess the same formal right to influence opinion, to nominate candidates, to run for office, and to vote - that endows public decisions with legitimacy (Dahl 1989; Dahl 2006). However, even the decisions of parliamentary organs seem ever so legitimate in the eyes of the citizens - *such organs can only make a very small number of the decisions affecting citizens' welfare made in*

*the modern welfare state*. The reason for this lies in the institutional limitations of the democratic decision-making process. Firstly, many such decisions involve particular cases and special situations. They may concern the distribution of child-care places, the placement of patients in the queue for medical operations, support for industries located in sparsely populated parts of the country, or the compulsory care of drug-abusers. Public authorities in such areas must also make decisions *continually* - doing so is part of the day's work for a teacher in a classroom, for instance, or a doctor at an emergency ward. The scope for democratic control over decisions of this kind is very slight, however, for such decisions require a specific knowledge of each case. The need for *situational adjustment*, in other words, is so great in many situations as to render impossible any centralized, uniform decision-making process (Friedman 1981). This means that many decisions - often of critical importance for individual citizens and groups - will always lack democratic legitimacy, for the simple reason that no democratically chosen assembly can have any decisive influence over them. This problem can be called "the black hole of democracy" (Rothstein 1998).

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

social rights, unlike civil and political rights, require complex programs, policies, procedures of implementation, coordination, eligibility criteria, and so forth to be usable to the citizen (Friedman 1981, p. 5).

The "rule of law" picture of the public administration - as a simple executor of parliamentary decisions is therefore gravely misleading (Feldman 2003). Equalizing "good governance" with only "the rule of law" is therefore a mistake (Rothstein and Teorell 2008). Many analyses of the legitimacy problems in the public administration treat it as a single unit - as a more or less homogeneous and uniform organization that should be bound by "the rule of

law". This is a serious mistake, however. Within what the administration of the modern welfare state, a range of organizational forms and administrative principles may be found. The purpose of this paper is to set forth the hypothesis that the need for legitimacy - for the acceptance by citizens of decisions as just - is an important explanation for the genesis of different administrative forms in the modern welfare state. The five models (all of which I analyze from a legitimacy perspective) are as follows:

The legal-bureaucratic model

The professional model

The corporatist model

The pseudo-market model

The lottery-based model

### *The Legal-Bureaucratic Model*

The word "bureaucracy" carries, in daily language, mainly negative connotations. For Weber, however, the term was not just negatively charged; he also saw bureaucracy as a special organizational form capable of conferring legitimacy on the political system (Beetham 1985). Weber considered bureaucracy's foremost characteristic to be the impartial application of *centrally determined, precise and standardized rules*. In this type of administration, disinterested, impartial officials apply precise rules on an objective and factual basis. An administrative form based on precise rules could achieve legitimacy, according to Weber, because of the protection against administrative arbitrariness such rules afforded. If they are to produce such beneficial effects, however, the rules must first of all be *general*, i.e., so formulated as to treat like cases in a like manner. In addition, the rules must be specified with sufficient *precision* as to make it possible to *predict* the actions of the state (Du Gay 2000). The citizens of a bureaucratic state can therefore *calculate* - on the basis of their knowledge of the rules - what the effects of their relations with the state will be. Indeed, bureaucracy's central basis of legitimacy is precisely its *calculability* (Offe 1986, ch. 10) that in turn rests on impartiality as the basic norm for the implementation of the rules/laws. .

Weber deemed it advantageous, though not necessary, that citizens view laws and rules as having been adopted in an acceptable manner, e.g., through the decisions of a democratically



elected parliament (Beetham 1985, p. 255f). The critical thing, however, is that citizens can foresee the effects such rules produce (Du Gay 2000). This requires that the rules have a certain persistence, i.e., that they not be changed abruptly, or used *solely* as an instrument for achieving politically determined social change. Claus Offe has underlined that:

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

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

### *Bureaucracy's Achilles' Heel: The Need for Flexibility*

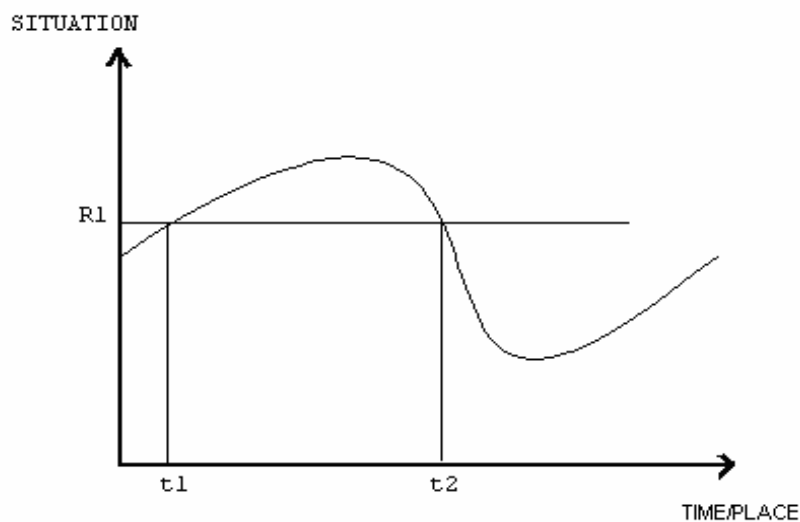
The limitations of the bureaucratic "rule of law" model are based in the difficulty of framing rules in a sufficiently precise manner (Feldman 2003). Aristotle himself noted that written laws cannot be applied in all situations, since legislators, "being unable to define for all cases,...are obliged to make universal statements, which are not applicable to all but only to most cases." Aristotle concluded therefore that "equity is justice that goes beyond the written law" (Aristotle cited in Brand 1988). Parliament can easily pass a law, for instance, declaring that all children between 7 and 16 years of age have the right to attend school. However,

certain pupils need more instruction than others, for example students with disabilities. The problem then arises that each mentally or physically “challenged” student’s case is in principle unique; there is, accordingly, no way to specify in law *how much* extra attention and resources such a student is entitled to. Decisions of this kind must instead be made from case to case. Mark Jacobs has called attention to how, in the case of the USA, the imprecision of the laws applied in this area has the effect of undermining the political system's legitimacy, for the reality is that the rules leave those seeking assistance at the mercy of administrative officials. Jacobs claims that the right to assistance proclaimed in law is therefore illusory (Jacobs 1986). Another such example may be seen in the case of state intervention to remove abused children from the custody of their parents. It is exceedingly difficult to establish precise criteria in advance for when to intervene in such cases. Children must certainly be protected from maltreatment and neglect, yet separating children from their parents is a severe intrusion on the part of the state into the lives of citizens. Specifying criteria in such cases as these is terribly difficult. Claus Offe, accordingly, has claimed that:

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

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

**Figure 1. Administration by Rules under Dynamic Conditions**



The curve in figure 1 represents a dynamic process which the state wishes to regulate. The horizontal line symbolizes a precise “rule of law” rule, i.e., one specifying that, under condition R1, a measure specified in the law shall be performed by the state. The problem may be illustrated by comparing points t1 and t2. If the bureaucrat decides on the basis of the rule, the very same measure will be taken at both t1 and t2, since the prevailing conditions are exactly the same. If we view the situation *in its context*, however, it is clear that the circumstances at t1 and t2 are actually fundamentally different (the curve veers sharply upward in the former case, sharply downward in the latter). This means that, if the same measure is taken in both cases, *it will be altogether inappropriate in one of them*. If such an outcome is to be avoided, the actions taken must be *situationally adjusted* - something the legal-bureaucratic rule of law model has great difficulty doing (Mayntz 1983). Examples that can illustrate this are for example what a social worker should do when handling a case of child neglect. The rule may say that when this neglect has come to a certain point, the child should be taken into custody. However, at t1 things in the family are improving and taking the child into custody may do much more harm than good. In t2, the family situation is sharply

deteriorating and leaving the child with the family can cause serious and maybe irrevocable harm. Max Weber was well aware of this problem. Bureaucracy was, he claimed, rational *in form*, but this did not mean it was also always rational *for the pursuit of ends* (Rothstein 1996). The legal-bureaucratic administration of a program may be judged successful to the extent that it follows the lines laid down in the formal rules. Whether this also entails achieving the goals of the program is an open question. The success of the program depends on whether the rules are framed in a manner corresponding to the nature of the object towards which the program is directed (Feldman 2003).

Seen from the standpoint of “will of the people” type democratic theory, this gap between form- and goal-rationality is the central problem of the politics of administration (Smith 2003). If legislatures were capable of framing rules of such precision as to specify how administrative agencies should act in every situation, then of course bureaucrats would exercise no political influence. And indeed, the rule of law/legal-bureaucratic model usually enjoys considerable legitimacy in areas in which the state authorities are able effectively to specify criteria for administrative action. The basic idea of representative democracy - that parliamentary organs should exercise the decisive political power - builds implicitly on the idea that such organs can design laws with sufficient precision. Yet in many areas it is impossible, for the above-mentioned logistical reasons, to direct governmental activities on the basis of precise rules. If an attempt is made to apply precise rules within areas characterized by rapid changes or greatly variable cases, absurd consequences easily follow, as the abundant literature portraying the individual's encounter with a rigid and uncomprehending bureaucracy illustrates. The advantage of the bureaucratic model lies, in sum, in its predictability, while its major drawback is its rigidity. These characteristics are, however, but two sides of the same coin, for precision and predictability always entail inflexibility. The demand that administrators be flexible - that they adjust their actions to changing circumstances and varying cases - can only be satisfied if they exercise influence over policy. Flexible administration presupposes that administrators enjoy a certain *room for manoeuvre*, i.e., an area of authority and decision-making outside parliamentary control (Smith 2003). The administrative models to which I now turn all represent attempts to solve this problem; they are all designed to ensure that administrative measures are regarded as legitimate, even when they are not exhaustively prescribed beforehand in rules drawn up by parliamentary organs.

### *The Professional Model*

A professional administration differs from a bureaucratic one in being staffed largely by a professional corps. Such a corps is distinguished by its possession of the specialized evidence-based knowledge needed for running a particular program. While laws may be important, they play a secondary role in place of evidence-based knowledge (Bertilsson 1990). A classical example is of course the medical profession in a public health care system. The legitimacy of the health service is not based on its being operated in accordance with precise “rule of law” like rules framed by ever so democratically chosen bodies. Its legitimacy rests rather on the notion that it is operated on the basis of *evidence based knowledge that is implemented in an impartial way* (Milewa 2008). The professional corps develops this expertise autonomously, and its members apply it in specific cases according to their individual judgement, and on their own responsibility (Beckman 1990). The Swedish health care law, for example, prescribes that doctors base their decisions for treatment "on scientific grounds or on tested experience," not on the basis of a codified system of laws passed by a democratic assembly (a fact for which we may be grateful!). Physicians who violate these norms may be held responsible for the consequences (cf. Sanders and Harrison 2008).

It is the skill in the application of evidence-based knowledge and not the interpretation of universal rules that is the basis for the legitimacy of the professional model of administration. Those staffing such an administration must, however, be regarded as possessing genuine expertise, or their exercise of authority will not be considered legitimate (Wong 2001). Their expertise must, in other words, pass certain tests. First, it must be recognized by the state - indeed, this is the necessary foundation for any professional autonomy at all in the implementation of public policy. The state bestows such recognition when, for example, it confers the right to practice on certified members of the profession. Secondly, the general public must have confidence in the expertise possessed by the corps. Thirdly, the expertise must be applicable, i.e., the field in question must have developed a body of generally accepted knowledge capable of giving detailed guidance to practitioners in the treatment of individual cases (Bertilsson 1999). The authority of a professional corps is founded on the fact that its members monopolize knowledge of such a type that "non-professional followers" cannot "check its specificity and boundaries." Professional authority is, as Beckman has so

pungently put it, "the only type of authority that relies wholly on the personal incompetence of its followers" (Beckman 1990, p. 127f).

It is a specific type of impartiality that is connected to professional legitimacy. It is not the dry, impersonal "sine ira et studio" rule of law type of impartiality that characterize the bureaucratic legal model because professionals are usually strongly committed to the program they are supposed to carry out, be it fighting poverty, preserving the environment or learning small children to read. A case in point would be teachers in the Scandinavian public or semi-public pre-school system. These are highly trained professionals who certainly do not think of their work as being impartial towards the children. Instead, they are supposed to be very engaged in the personal development of their pre-schoolers and also "customize" their attention to each child according to his or her specific needs. They are at least to some extent driven more by what feminist scholars have labelled a "logic of care" than a "logic of justice" However, there would be a public outrage if parents would find out that they deliberately had given more attention to certain children whose parents had paid them on the side, or children that belonged to a certain ethnic group, or religion, etc (Rothstein and Teorell 2008).

In sum, by relying on the guidance provided by professional experts, rather than that given by precise rules, public programs can acquire legitimacy even in areas featuring a great need for situational adjustment. This presumes, however, a relatively far-reaching correspondence between the intentions of legislators and the interests of professionals. It furthermore requires that the body of knowledge possessed by the professionals be of the right sort - generally accepted, on the one hand, and capable of guiding the treatment of individual cases, on the other. Thirdly, this model for legitimacy requires professional corpses with a reasonably high ethical standard that can assure the public that impartiality (and not corruption or discrimination) will be the guiding principle in the implementation process (Rothstein and Teorell 2008).

### *The Corporatist Model*

How can political legitimacy be created if there is a strong need for situational adjustment but no acceptable professional knowledge or corps that can fill this need. In Northern Europe, one widely used model has been corporatist administration. In this model, legitimacy is produced

by giving representatives of the groups directly affected by the policy in question influence over the implementation process (Andersen 1988; Cawson 1986; Streeck and Crouch 2006). The model assumes that such representatives are chosen by the groups in a way that makes them legitimate in the eyes of their constituents. A further assumption is that policy implementation is often successful only when the group towards which the policy is directed cooperates willingly. One way to elicit the group's collaboration is to grant the organization representing it an exclusive right to participate in the policy's execution (Öberg 2002). One of the reasons for allowing such organizational representatives to participate in administration is precisely that they:

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

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

It may be argued that, in addition to its suitability for legitimizing decisions, the corporative administrative form boasts a further advantage. The state leadership has often sought - especially areas such as labor market and industrial policy - to organize administrative decision-making in such a manner as to create an arena for negotiation and compromise between different interests. The state may find such an arena of compromise useful when, for example, it intervenes in such areas as the work safety, labor market policy and industrial development (King and Rothstein 1993; King and Rothstein 1994). Policy implementation in such areas requires a high degree of flexibility and situational adjustment, so it is not possible to use the legal-bureaucratic model and it is difficult to find a professional corps that can fill the needs for flexible implementation (Brand 1988). Furthermore, such areas are often

characterized by sharp conflicts between opposing interests, for example between employers and wage-earners. By granting equal representation on administrative bodies to both sides of industry, state leaders hope to encourage decisions marked by compromise rather than legal confrontation (Kelman 1981). Impartiality is thus produced by giving "equal representation" to organization with conflicting interests (Rothstein 1992b). This means however that, in the corporative model, the distinction between politics and administration is virtually erased. Scholars in legal sociology and in law have noted that this fusion produces a new legal form, which they have termed "reflexive law." Such law does not govern the disposition of material things, but rather "regulates the areas of competence of different societal systems, their organizational and institutional structures, and their forms for decision-making" (Teubner 1993).

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

It is true that an associative social order implies a devolution of state functions to interest intermediaries. But this has to be accompanied by a simultaneous acquisition by the state of a capacity to design, monitor and keep in check the new self-regulating system's 'procedural control (Streeck and Schmitter 1985, p. 26)

Let me illustrate how such a system can be established and its consequences with yet another case. From 1902, local employment offices were set up in which representatives from the local unions and employers' organizations party was given an equal number of seats on the boards of directors. As chairman of these local boards, an impartial higher ranking municipal official or a judge from the local court was placed. This may seem today to be a rather simple measure, but at the time, power over the employment offices was a highly politically charged



arena by reason of the frequent and often very intense local industrial conflicts. The party that had control over the distribution of work naturally had the upper hand in that regard – unions could exploit the power to block the employers and the employers could, if they controlled the employment offices, recruit "willing workers" and blacklist strike leaders from employment in general. In Germany and many other countries (including Denmark and Norway), control over the employment office system had become an issue fraught with conflict between unions and employers, but the matter played out in a completely different way in Sweden (Schiller 1967, p- 9-36).

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

Starting in 1907, state subsidies were paid to the employment offices provided they were organized as noted above. Interesting in the context is that leading representatives of both social democracy and the employers' federation (SAF) were initially skeptical about these establishments. SAF had far-reaching plans to introduce the system that prevailed in much of Germany, where the employers had taken control over the employment offices and used them as a very effective instrument against the unions (Schiller 1967, p. 9–36). The Social Democratic leader Hjalmar Branting spoke out in the Riksdag in 1903 against the bill to support the system of state subsidies because he felt there was a risk that the employment offices would be exploited by management to recruit strikebreakers and so weaken the unions. A couple of years later their fears had been allayed and local representatives of both parties took part in several employment office conferences organized by the National Board of Trade, starting in 1906

There is reason to ponder the temporal logic of this development, as it began before all adult males were enfranchised in 1909 and many years before parliamentary democracy was

secured in 1917. Representatives of employers and unions had thus, prior to that point, begun continually cooperating on an issue that was sensitive to both parties, on the national level as well, but especially on the local level. Particularly surprising is that this cooperation, as far as can be judged, seems to have proceeded in a relatively frictionless manner. There are no reports of any local antagonism, and the five contemporary reports of proceedings from various employment offices that I have reviewed (Uppsala, Stockholm, Malmö, Göteborg, Helsingborg) contained no notes indicating conflicts about anything other than trivialities.

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

Despite the sharp social and political antagonisms that in other areas of society could make themselves felt between members of the management and labor camps, the same individuals on employment office boards have, in the experience of the National Board of Health and Welfare, always loyally cooperated in the interests of objectivity (cit. in Rothstein 1992a, p. 94).

There is reason to linger a moment with this assessment. What the report stated was that "the same individuals" who outside the public institutions could be involved in serious conflicts, changed their behavior when asked to act within the frameworks of those corporatist institutions. Their sometimes intense and doubtless bitter struggle of interests was *transformed* by the institutional conditions into cooperation based on the principle of impartiality and mutual advantage. To some extent, this dovetails nicely with Elinor Ostrom's

findings on how local actors that are competing over local natural resources can manage the difficult social dilemma of conservation of such resources. The institutional conditions proved capable of reshaping the actions of the actors from the point where they considered only their own short-term economic interests to that where they began discussing how they could work together to find cooperative solutions [Ostrom, 1990 #79, p. 138].

### *The Pseudo-Market Model*

There are cases when none of the above-mentioned models work for creating legitimacy. Neither precise and universal laws, nor professions and nor interest group representatives can be “produced” that creates the level or amount of legitimacy deemed necessary. The problem of adapting the operations of public programs to individual cases brings us to one of the fairly well-researched questions within implementation research, namely the problem of "street-level bureaucracy." According to this theory, the character of measures taken within dynamically interventionist areas are decided, in actual fact, by the operative field personnel. This is because it is impossible, on account of the factors of uncertainty mentioned above, for central political organs to prescribe in detail all of the disparate measures which must be taken in each of the various cases to be handled. Accordingly, the operative staff that works face-to-face with the clients - teachers, health staff, social workers, police, etc. - must be granted a relatively wide freedom of action, for it is they who must choose exactly which measures to apply in the individual case (Adler and Asquith 1981). They must, that is, be granted the right to judge - independently, and on their own responsibility - which measures are appropriate in a given situation. *It is the sum of their actions which constitutes the public program.* As for whether these actions reflect the objectives laid down by the democratically constituted organs - this must be regarded as an open question (Lipsky 1980).

Accordingly, many decisions of great import for the well-being of individual citizens are made by local public organs and individual officials (Elster 1992). What we might call a *black hole of democracy* appears here, i.e., the administrators and officials who decide over the welfare of citizens can be difficult (well-nigh impossible, in fact) to hold in any way responsible for their actions (Rothstein 1998). The elected politicians thus have but limited influence over the actual substance of public policy - or, expressed more directly, over what the state in these cases actually does with the citizens. For the operative personnel must be granted the prerogative of assessing the constantly changing situations *in their context*, and of taking measures in accordance with this assessment. This places heavy demands on (a) the

organization of the program in question, and (b) the legitimacy of the measures taken. One way this has been dealt with in the Nordic welfare states is to allow for choice of producer and to open up for a limited amount of competition between producers. Beginning in the early 1990s, Denmark, Sweden and to some extent Norway and Finland have introduced such models within public school education, health care, day-care/pre-schooling and elderly care, partly as a response to the “black-hole” problem in service delivery. The system works mainly on a “voucher” basis where the producers (which can be a private firm, a non-profit organization, a producer-cooperative or a user-cooperative) gets public funding for its services provided that they adhere to rules and regulations (including inspections) set by the government and/or the Parliament (Blomqvist and Rothstein 2000). These are thus not pure markets since funding, rules and regulations are determined by the state (Lundqvist 1988). For schools, the U.S. equivalent would be the so-called “charter schools”.<sup>1</sup> About twenty percent of school children in Sweden and Denmark now attend such schools. The logic of legitimacy within these models is twofold. First, if not content with the service, the citizen is given the possibility to switch to another producer. Secondly, since this is run by tax-payers money, and since such money should not be used on an “anything-goes” basis, government authorities retain some influence and have the right to withhold funding. There is quite some evidence that this system has worked to increase legitimacy for the universal welfare state system (and its high level of taxation), not least among the middle-class. Interestingly, with some minor exceptions, this is not a politically controversial question between the left and the right in the Nordic countries.

### *The Lottery-Based Model*

All of the models discussed above proceed on the assumption that legitimacy in the implementation stage can be achieved, if only those deciding have the right combination of resources, knowledge, and values. For certain types of decisions, however, it is impossible to find such persons. The number of decisions may be very large, for example, while the number of persons with the right combination of qualities is small. There are also times when an administrator must decide how to distribute a benefit or burden, even while it is altogether clear that no acceptable criteria for making the decision can be found (however great the knowledge and resources of the administrator, and however noble his values). Or it may entail

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<sup>1</sup> More than one colleague in the U.S. have found it quite amazing that “semi-socialist” Denmark and Sweden have a full scale charter school system.

too high a price - in relation to the matter's importance - to gather all the information needed to make a correct decision. In order to avoid making such decisions on a wholly arbitrary basis, lots are sometimes drawn to settle the question. This somewhat unusual method is used, for example, in deciding who may enter certain types of university study in Sweden; a number of countries also employ it for deciding who shall perform military service. In the absence of usable criteria, then, chance is made the basis of legitimacy; the sense of justice it expresses is reflected in the statistical fact of everyone's equal opportunity.

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

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

*Summary: The models of legitimacy*

Starting with the need for creating legitimacy at the output side of the democratic machinery and acknowledging that the limitations of the bureaucratic “rule of law” model , the argument is summarized in the table below.

**Table 1. Five models of political legitimacy**

<b>MODEL:</b>	<b>Bureaucracy</b>	<b>Profession</b>	<b>Corporatism</b>	<b>Pseudo-market</b>	<b>Lottery</b>
<i><b>Basis of legitimacy</b></i>	General rules	Evidence based expertise	Equal group representation	Choice and public regulation	Equal chances
<i><b>Organiza-tion</b></i>	Hierarchical	Collegial	Multi-partite	Private	None
<i><b>Main actor</b></i>	Public official/civil servant	Professional/expert	Representative.	Producer	Lottery overseer
<i><b>Precondition</b></i>	Precise rules	Applicable knowledge	Monopolized interest	Information about supply	Reliability
<i><b>Problem</b></i>	Inflexibility	Assymetic knowledge	Dominance of special interests	Differences in ability to make choices	Unpredictability
<i><b>Advantage</b></i>	Predictability	Evidence-based implementation	Cooptation and flexibility	Competition	Statistical impartiality
<i><b>Type of decision</b></i>	Interpretation of rules	Professional judgement	Negotiation/persuasion	Where to buy, what to produce	Drawing of lots

By tracing the implications of the need for legitimacy in the implementation of public policy, it has been possible to understand why the administrative systems of modern welfare states assume such varying forms in mature democracies. We can also better understand the reasons for a failure to achieve legitimacy - failure results when an administrative model is applied to an area in which the conditions requisite to its successful application are lacking. A tendency to resort to simple dichotomies may be observed in the public policy literature; societal

mechanisms of direction and coordination, for instance, are often reduced to two simple forms - markets vs. hierarchies. Yet such dichotomies are altogether too crude, at least in the case of the modern welfare state. Policies are not implemented on the basis of a single organizational model, but rather in a wide variety of ways. The challenge is to account for the great variation in administrative methods, and furthermore to explain why for example the corporatist model with representation of interest groups is more frequent in some policy areas than in others.

If the representational system is democratic, citizens will regard political decisions as legitimate - so goes the precept in mainstream democratic theory. As this presentation has shown, however, such a basis of legitimacy does not suffice; rather, the state can employ a wide range of methods located at the *output side* to make its decisions appear justified in the eyes of its citizens (Scharpf 1999). The quality of government (or good governance) is thus at least as important as is electoral-representative democracy for creating overall legitimacy for a political system and a welfare state (Gilley 2006a; Gilley 2006b; Rothstein 2008). This is also our tentative answer to the Scandinavian puzzle at stated in the introduction, namely how to explain the support for the welfare state systems in these countries given the low level of trust in politicians and political parties and, in the case of Norway, the “eroding” parliamentary chain of command.

The manner in which public administration is organized is not just a question of rationality and efficiency. It is, rather, of critical significance for the overall legitimacy of the political system (Levi, Sacks and Tyler 2008). This argument is built on the idea that citizens generally come into contact with the output side of the political system - with the administration, that is - far more frequently and intensively than they do with its input side. Moreover, what happens to them on the “output side” is often of crucial importance for their well-being and also for their political orientations (Kumlin 2004). One could say that the administration *is* the political system - as citizens concretely encounter and experience it. The character of the administration is therefore decisive for the way in which the political system is viewed. If citizens perceive that the processes of policy implementation are fair, competent and trustworthy, legitimacy may be created even if the representative side of the democratic machinery is out of order.

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