

Can We Afford to Separate Politics from Administration? Designing Powers in the Service of Implementation

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Abstract

This Article investigates the impact of a possible neo-Weberian view of organizational behavior on formulations about the separation of powers. This neo-Weberian view of organizational behavior is called here the 'administrative behavior hypothesis' and it leverages one century of scholarship. The results of such an investigation are encouraging, as management sciences may induce changes in the formulation and implementation of law, with an impact on current approaches to constitutional reform, and consequently to economic development across the globe. The administrative behavior hypothesis appears persuasive, and future studies might investigate more avenues, beyond the basic recommendation provided here.

Laws indeed there are: But who is he observes them?

We are a charity, but not for our employees.

I. Introduction

Scholars of public law and political theory have been revising Montesquieu's model of the separation of powers nearly three centuries after its original formulation in 1748. Likewise public law appears to be based on the Weberian typical ideal view of rational behavior of public administration, a view that has also been revised over the course of the last century by both management sciences and micro-economics. This article investigates the interaction between these two strands of scholarship and the impact of a possible *neo-Weberian* view of organizational behavior on formulations about the separation of powers. This *neo-Weberian* view of organizational behavior is called here the 'administrative behavior hypothesis'. The results of such an investigation are encouraging, as management sciences may induce changes in the formulation and implementation of law, with an impact on current approaches to constitutional reform, and

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consequently to economic development across the globe. The administrative behavior hypothesis appears persuasive, and future studies might investigate more avenues, beyond the basic recommendation provided here.

This Part I is focused on Bruce Ackerman's work on the new separation of the three classical powers.¹ Ackerman deals with the separation of powers in three respects: (1) the boundaries between parliament and the executive; (2) the germane point about the possible separation of politics from administration; and (3) new powers that need to be introduced. Accordingly, there are three Sections within this Part I.

1. Curbing Executive Power Through Parliament

In terms of the line of separation between legislative and the executive, Ackerman is concerned with the relationship between President and Parliament, be the latter adversarial or friendly according to the majority represented there. Ackerman prefers the European parliamentary system to the American presidential system because the former curbs the influence of politics (ie, of the executive or the President in the case of the US) on public administration. Ackerman wants to avoid the 'spoils system' by means of tighter parliamentary controls over the executive branch, as is the case in the European systems, notwithstanding France's semi-presidential arrangement.²

2. The Division Between Politics and Administration Within the Executive

Ackerman's general point is about the separation of politics from administration. In the first section – discussing the points mentioned above – he deals with this question at the level of the powers: legislative vs executive vs judicial. He then tackles the same issue one level below, examining the executive branch: here, in his view,³ is where the second element of separation of powers is located, namely 'the division between politics and administration'. This issue is central to the argument in this article. In his Section II, 'Functional Specialization', Ackerman addresses at length the key question at the center of this article: is a separation desirable and possible between politics and administration, especially within the executive branch?

Ackerman directs his attention to within the executive branch and asks the question:

¹ B. Ackerman, 'The New Separation of Powers' 113 *Harvard Law Review*, 633-725 (2000). One limitation of this paper is that the article is founded upon is nearly twenty years old, however it can be noted that Professor Ackerman's current work still includes the acknowledgement of Weberian 'bureaucratic rationality' (B. Ackerman, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* (Cambridge, Massachusetts: Harvard University Press, 2019), 1).

² B. Ackerman's preferred European systems are Germany, the United Kingdom and France.

³ B. Ackerman, n 1 above.

‘Should we carve out a space, insulated from direct political intervention, in which judges and bureaucrats may deploy their professional judgment in the service of legislative objectives?’⁴

He adds:

‘This Part⁵ begins on a constructive note, proposing new forms of separation that may help to realize the promise of a professional judicial and civil service to fair and effective government’.⁶

Ackerman explores the consequences of American-style ‘presidentialism’ ‘on impartial and professional public administration’. In this same section,⁷ Ackerman finds his separation of politics from administration (ie constrained presidentialism) no longer on democratic legitimacy (as he does in his previous section, speaking about parliament vs president), but instead on the need for functional specialization between politics and administration within one branch of power: the executive. However, he does acknowledge that politicians should decide on the ‘elaboration of basic values’ and on

‘some concrete questions (that) are so important and so difficult to regulate in advance, that they should be reserved for direct decision by high-visibility politicians – a declaration of war can serve as the paradigm’.⁸

The rest should be dealt with by public administration (ie, the bureaucracy).

Ackerman’s vision of a functional specialization between politics and public administration ‘requires a candid assessment of a nation’s cultural and human resources’. He continues:

‘Before functional separation can make sense, there must be the makings of something I shall call a ‘Weberian culture’. At least some talented people must find inspiration in the prospect of professional service to the state. Otherwise, the functional separation of powers will serve merely as a fig leaf for corruption and clientelism. ... Public-spirited specialists are ... in short supply in many parts of the world – in which case there will be many more important things to worry about than the functional separation of powers’.⁹

What Ackerman makes explicit in these key passages is widely echoed in documents of global public organizations and in the global media. In fact,

⁴ *ibid* 685; notice Ackerman here speaks of judges also as bureaucrats, assimilating them in the administrative, non-political, non-elected areas of public service.

⁵ *ibid* 686 (II Functional Specialization, ie politics vs administration).

⁶ *ibid* 686.

⁷ *ibid* 687.

⁸ *ibid* 687.

⁹ *ibid* 687 (citation omitted).

Ackerman's hypothesis about the existence of a 'Weberian culture' and 'public-spirited specialists' speaks to the existence of a 'class of higher echelons' in public administration as implied by today's media.¹⁰ Such Weberian thinking also permeates much of international law and international and national organizations' policy.¹¹

Ackerman's hypothesis also raises a question about what exactly the public administration literature is dealing with: is it the millions of people (and their higher echelons) who are employed by governments or it is only the higher echelons themselves? This question is not pursued in this article. Nonetheless, the intellectual and emotional nourishment of 'public-spirited specialists' is the basic tenet of – for instance – the Harvard Kennedy School (HKS), which Ackerman mentions explicitly,¹² – and of many schools of public administration around the world. Schools of public administration work under the Weberian hypothesis whereby training and endowing as many public managers as possible around the world with the 'right' skills will result in better public administrations and they, the schools, will have made a difference. Such an all-out effort and an expectation of public-spiritedness appears to be aimed not only at the higher echelons but to the whole body of employees on public payroll globally.¹³

3. New Powers to Be Introduced

Ackerman¹⁴ also stresses the need for new branches of power to be independent of one other and of the classical three powers. Historically, the first separate power

¹⁰ 'Mandarin Lessons: Governments Need to Rethink How They Reward and Motivate Civil Servants' *The Economist*, 9 August 2014; 'Aiwa (Yes) Minister: 'The Region's Countries Desperately Need to Reform Their Public Sectors' *The Economist*, 14 November 2015; and 'From Red Tape to Joined-up Government: Latin America's Efforts to Improve Public Policies Are Often Undermined by Politicised and Obsolete Civil Services' *The Economist*, 28 January 2016.

¹¹ International Monetary (IMF), 'Fund Fiscal Affairs and Legal Departments, Corruption: Costs and Mitigating Strategies' (May 2016) (<https://tinyurl.com/y2xe8p22>, last visited 30 December 2019), at iii, 'Perhaps most importantly, however, addressing corruption requires effective institutions. While building institutions is a complex and time consuming exercise that involves a number of intangible elements that may seem beyond the reach of government policy, the objective is clear: the development of a competent civil service that takes pride in being independent of both private influence and public interference'.

¹² B. Ackerman, n 1 above, 711, 'Similarly, one may try to dissolve the tension between professionalism and American-style separation through a second form of reductionism deriding the 'myth of expertise' that serves as a principal justification for bureaucratic regulation. According to the extreme reductionist version, the folks at the Kennedy School are engaged in criminal fraud when they charge outrageous tuition for a degree in public administration – there is simply no such subject that can be taught. And because it's all politics anyway, there isn't anything wrong with revolving-door politicians' using their presidentially approved intuitions as they take their turn at the bureaucratic helm.

¹³ Thomas Hobbes seemingly answers this question in the second part of *Leviathan*, Chapter XXIII, *On the Public Ministers of the Sovereign Power*, where he enumerates rather extensively who is to be regarded as a public minister.

¹⁴ B. Ackerman, n 1 above.

was central banking, motivated by the avoidance of a ‘politicized’ management of such a function. Ackerman’s system of authorities is needed to allow a kind of non-parliamentary executive action, which presidential systems obtain through the president himself. Thus independent authorities appear to wield an executive power that is independent of parliament. Still, the Ackermanian view of independent and separate authorities appears to share with presidentialism an aspiration for effective executive action, taking it out of parliamentary control because parliaments are often fragmented.

II. From Weber to the ‘Administrative Behavior Hypothesis’

Part I contained a summary of Ackerman’s article on the separation of politics from administration and on the need for new powers. This Part makes observations about the assumption of Weberian public administration inherent in that article.

1. Explication of the Weber Hypothesis

This work focuses on Ackerman because Ackerman is aware of his need for Weber in his theory of the separation of politics from administration; and he makes that explicit. Ackerman’s contribution is noteworthy because such explication is not to be found elsewhere in the literature and arguably it has substantial consequences. Ackerman appears to be partially aware of this contribution.¹⁵ In fact, while he accepts the need for a ‘Weberian culture’, Ackerman does not seem to be aware that the Weberian perspective on bureaucracy is simply a hypothesis, destined to compete with at least one more viable alternative hypothesis.¹⁶

Let us take time to examine the existence of a hypothesis here: to implement a law, the executive will define (often by law itself) specific actions; such a definition presupposes a hypothesis about the organizational behavior of the public administration tasked with performing such actions. This is an intermediate step: between norms and actions there are organizations that are defined by their organizational behavior.¹⁷ Therefore a norm that is not limited merely to the enunciation of a principle, but prescribes an action, presupposes a hypothesis about organizational behavior.

¹⁵ B. Ackerman, n 1 above, 687.

¹⁶ This is the lesson of G. Allison and P. Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis* (New York: Longman, 1999), who reveal the existence of implicit hypotheses in explaining foreign policy and explore the relevance and empirical value of three different alternative hypotheses. This study basically extends Allison to public law.

¹⁷ The notion that norms imply implementing organizations is also in S. Holmes and C.R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: W.W. Norton, 1999). From the necessity of implementing organizations, Holmes and Sunstein derive their notion that ‘all rights are positive’, ie, all rights require expenses. We go further here: norms not only imply the existence of implementing organizations, but also imply hypotheses of organizational behavior about those implementing organizations.

Having said this, Ackerman does consider Buchanan and Tullock's exquisitely political theory of organizational behavior as a possible alternative, but dismisses it as reductionism.¹⁸ However, in doing so, he fails to take into account the mainstream literature on organizational behavior and administrative behavior. Ackerman does not consider management as a third option, over and above law and politics. The literature on organizations and administration, in fact, shows that the hypothesis of Weberian organizational behavior is hardly supported by experimental evidence, but it does not dismiss organizational behavior as 'all politics', as Ackerman appears to.¹⁹

On the other hand, Ackerman does consider the possible consequences of a Weberian hypothesis remaining unfulfilled and states that, unless we have a class of Weberian bureaucrats,²⁰ constitutional arrangements in the long run prove unsustainable. Thus his constitutionalism appears to be good only for a few countries in the world – twenty at most, eg, some (not all) of the main OECD countries, covering no more than seventeen per cent of humanity.²¹ Nonetheless, it is to be noted here – and it will be argued later – that most of these advanced countries are not satisfied with their bureaucracies. A case in point is *The Economist's* complaint that the United Kingdom is in the hands of a 'caste of "un-sackable" functionaries'.²² Moreover, most of the relevant literature that is critical of Weber in fact comes from such countries, which are today regarded as endowed with relatively Weberian bureaucracies.²³

Moving forward somewhat, it would be helpful to develop a constitutional theory that works for more people, especially in developing countries. Such an effort would follow in the footsteps of Ferrara's *Democratic Horizon*,²⁴ which tries to found politics on weaker grounds – or less heroic hypotheses – than current theory would have it. It is an ambition of this article to contribute to a more robust theory of the separation of powers and of institutional design.

¹⁸ W.H. Riker et al 'The Calculus of Consent' 6 *Midwest Journal of Political Science*, 408 (1962); B. Ackerman, n 1 above, 711 and 719.

¹⁹ B. Ackerman, n 1 above, 711.

²⁰ Upon closer reflection, Weberian bureaucrats appear to be an evolution of Plato's ruling class of guardians, who know how to rule and understand ruling as a craft. However, differently than Plato's guardians, bureaucrats ideally don't 'rule', and, if they do so, they 'usurp' power from the legislative representatives of 'the people' (as in liberal theory), or from 'the people' themselves (as in populist imagery).

²¹ B. Ackerman has in mind the United States (n 1 above, 688), Germany, the United Kingdom, and France. Adding the rest of the European Union, the United States, Canada, Australia, New Zealand, Japan, and India, his is a constitutional theory for one-third of humanity at most.

²² 'Mandarin Lessons' n 10 above.

²³ They are called 'neo-Weberian' rather than 'non-Weberian' because they operate within the horizon of rationality of intentions, but do not imply a rationality of outcomes, as Ackerman expects Weberian bureaucrats to deliver. Outside the English-speaking community, let us recall: in France, M. Crozier, *The Bureaucratic Phenomenon* (Chicago: Chicago University Press, 1964), and in Austria, L. von Mises, *Bureaucracy* (Glasgow: W. Hodge & Company, Limited, 1945).

²⁴ A. Ferrara, *The Democratic Horizon. Hyperpluralism and the Renewal of Political Liberalism* (New York: Cambridge University Press, 2014).

Ackerman's cultural argument appears to run as follows: to be able to do effective constitutionalism, there is a need for an appropriate culture. Such argument could also be formulated as follows: while all virtuous administrations seemingly look alike, the malfunctioning of public administration is often thought to be specific to the culture and 'civicness'²⁵ (or lack thereof) of the country being observed and not connected to the intrinsic inefficiencies of that country's organizational arrangements – the arrangements of public administrations around the world of course being the very subject of public law. It is interesting that organizational cultures are also studied in private business;²⁶ however, this has never hindered a comparison of businesses across countries in the way that it has hampered comparative public law and public administration. So, in paraphrasing the opening lines of Leo Tolstoy's novel *Anna Karenina*, one could say: 'Efficient businesses are all alike; every inefficient public administration is inefficient in its own way'. But this is not the case: that is why this is a 'trap'; the 'Tolstoy Trap'. It is clear that, if a country is democratic to begin with, there is not much need to perfect constitutional law, or it can manage to function with constitutional arrangements that are less than robust: 'civicness', after all, is the capability to complement law through culture, custom, and shared values. On the other hand, unless one wants to argue that constitutional law applies only to people who are already democratic, guidance must be formulated for those belonging to developing or democratizing societies. While a country's political regime must clearly be in line with its people's virtues, *à la Montesquieu*, there is nonetheless a need to avoid a constitutional determinism whereby no innovation is possible. The approach proposed here aspires to be in line with such an understanding.

2. The Administrative Behavior Hypothesis

Weber's hypothesis on bureaucratic behavior should not receive exclusive consideration when formulating constitutional law. An alternative hypothesis should be put forward in which assumptions about bureaucrats' ethics – eg, expectations of altruism or professionalism – are no more demanding than in hypotheses held regarding employees in other sectors of the economy. Public law should therefore make provisions to orient organizational behavior *vis-à-vis* public administration in the same way that they already do regarding all other organized and individual actors in society and the economy. A less onerous set of assumptions is key in formulating a hypothesis that stands as an alternative to Weber's: namely, the 'administrative behavior hypothesis', to use Herbert Simon's expression.²⁷

²⁵ R.D. Putnam et al, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, NJ: Princeton University Press, 1993).

²⁶ E.H. Schein, *Organizational Culture and Leadership* (Hoboken, NJ: Wiley, 2017).

²⁷ H.A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization* (New York: Free Press, 1997).

The tools for orienting behavior accordingly are already available: *viz*, the organizational arrangements²⁸ once they are brought to bear on, and extended to, public administration. Outlining the nature of such an extension is the intended contribution of this article to the theory of the separation of powers in general and of the separation of politics and administration specifically. In fact, economic literature (especially neoclassical economics) routinely makes the assumption that the public sector works smoothly. The New Institutional Economics²⁹ argues that institutions play an important role in economic development, but no claim is made that public administration has to be responsible, nor is it questioned how that important role is to be achieved, if it is being enacted appropriately, or whether improvements could be made. There is no literature focusing on the inner workings of the organizations of public administration that evaluates the impact of public administration on the constitutional regime (or arrangements). Part III will present an example of a possible measure for integrating the ‘administrative behavior hypothesis’ within public law.

The science of management and the sociology of organizations – taught in schools of public management throughout the world –³⁰ can tell us more than just how to foster, or at a minimum how to prevent undermining, ‘public-spiritedness’. The aim of the present work is to identify specific institutions and organizational provisions, and in places intervene in the specifics of the debate about the separation of powers: where and how to separate those powers, and what organizations to build. The point is that what is needed – besides high-echelon and good people – are good institutions and proper organizational arrangements applied to public administration. *Neo-Weberian* theories of administrative (or organizational or bureaucratic) behavior make no reference to people’s positive or negative nature, while the Weberian bureaucrat is an idealistic construct that has been mistakenly understood as representing reality.

Why this is *neo-Weberian*: because it is still in the rationality of inputs, but it does not imply rationality of the desired outputs or of the consequences.

3. Public Administration as a Fourth Power

Ackerman’s acknowledgement of public administration as a fourth power³¹ is in tune with the literature and the administrative behavior hypothesis, which says that public administration has its own interest, which is equivalent to saying it behaves as a fourth independent power. There appears to be a contradiction here

²⁸ O.E. Williamson, *The Economics of Discretionary Behavior: Managerial Objectives in a Theory of the Firm* (Englewood Cliffs, NJ: Prentice-Hall, 1964).

²⁹ O.E. Williamson, ‘The New Institutional Economics: Taking Stock, Looking Ahead’ 38 *Journal of Economic Literature*, 595 (2000).

³⁰ B. Ackerman, n 1 above, 711 cites the Harvard Kennedy School orthodoxy.

³¹ B. Ackerman is also aware of the need to address the issue: ‘Constitutionalists should, therefore, extend their thinking to embrace the distinctive structural problems involved in controlling the fourth branch of government: the bureaucracy’ (B. Ackerman, n 1 above, 689).

in Ackerman's argument: if public administration is a fourth informal power, how can it be impartial *vis-à-vis* the executive, the other powers, and indeed the citizens? Bureaucrats wield power over politicians: this has been tested in many countries in many occurrences. Ackerman himself presents evidence of the large growth of bureaucracy in the USA from the early stages of the republic to the present day,³² for which typical evidence can be found in the *neo*-Weberian literature.³³

4. 'Fixing' Public Administration

Weber's model of a bureaucracy is formulated in a 'constructive' way,³⁴ to use the language of certain mathematical theorems that demonstrate that their thesis is true by simultaneously describing the process for building it. Such a formulation has resulted in a flurry of activity aimed at better specifying and implementing Weber's prescriptions. In fact, scholars and politicians (implicitly) adhering to the Weberian view of public administration – as well as public opinion – do acknowledge public administration's poor performance and air their concerns about how it might be improved, thus generating a strand of public administration reforms. Such reforms nonetheless remain focused on how to better implement Weberian prescriptions: tighter selection of personnel, more controls, more division of labor (or less division of labor, if the previous reform had more), or higher expectations of ethical behavior from individuals. Such approaches can be seen to some extent as trying to fix Weber with more Weber.

This kind of approach is observable in Ackerman³⁵ as well when he proposes an 'integrity branch' charged with the task of 'monitoring corruption phenomena'. Transparency and integrity are certainly desired goals. However, we question that such goals should be pursued through the creation of more public organizations. In general, it does not follow that the pursuit of a goal implies the creation of an organization for the sole purpose of pursuing that goal. To argue for this is to subscribe to the implicit hypothesis that current organizations cannot be reformed and their current organizational arrangements are already perfect. In the next section we articulate a different view of organizational behavior which stands on the same plane as Weber's and appears to be largely corroborated by theoretical and empirical evidence.

³² B. Ackerman, n 1 above.

³³ W.A. Niskanen, 'Bureaucracy: A Final Perspective', in W.A. Shughart and L. Razzolini eds, *The Elgar Companion to Public Choice* (Cheltenham: Edward Elgar, 2001).

³⁴ M. Weber, 'The Essentials of Bureaucratic Organization: An Ideal-Type Construction', in R.K. Merton et al eds, *The Theory of Social and Economic Organization* (Glencoe, Illinois: The Free Press 1947), *A Reader in Bureaucracy* (Oxford: Oxford University Press, 1952); S. Whimster, *The Essential Weber* (Routledge: London, 2002); E. Hanke and T. Kroll eds, *Max Weber-Studienausgabe: Band I/22,4: Wirtschaft und Gesellschaft. Herrschaft Taschenbuch* (Tuebingen: Mohr Siebeck, 2009).

³⁵ B. Ackerman, n 1 above.

5. Articulating the ‘Administrative Behavior Hypothesis’

It may be helpful to remember that Weber’s organizational thinking found expression most notably in the scientific management of Frederick Taylor,³⁶ which gave rise to the 1914 Ford assembly-line factory. Conversely, Weber can be seen as white-collar Taylorism. Even before Weber, other classics of administrative behavior

‘provide a different view of organizations from the Max Weber rational and impartial model. The Max Weber model is the basis for the neoclassical model of the profit-maximizing firm and it is also the basis for constitutional and administrative law and public administration organization’.³⁷

In fact, the notion in political science of self-serving behavior on the part of organizations goes back at least to Michels,³⁸ who formulated the ‘iron law of oligarchy’, focusing his gaze on political parties, which – once established – would only (or primarily) hold the scope of self-perpetuation. It is an ambition of this Article to introduce at this point the whole thread of thinking on organizational behavior, from Mayo and Barnard, in the 1930s,³⁹ through the Austrian economists, to Charles Lindblom, Herbert Simon, William Niskanen, Graham Allison, and Oliver Williamson.⁴⁰ Throughout the twentieth century, organizational science and micro-economics have been revising the rational organization model. Although these thinkers come from very different approaches and disciplines, they have a common denominator: we should not expect rational, impartial, or altruistic behavior from organizations. Charles Lindblom’s title conveys the idea: organizational science is ‘The Science of Muddling Through’.⁴¹

There are bodies of literature examining both private and public organizations. Introducing a theoretical concept from the literature at this point in the article is key in demonstrating that public administration organizations do not behave according to the Weberian model. In the following paragraphs we will provide an overview of the key authors who have presented theory and evidence for *neo-Weberian* organizational behavior.

³⁶ F. Winslow Taylor, *The Principles of Scientific Management* (New York: Harper 1911).

³⁷ A. Lippicirella, ‘On Bureaucratic Behavior’, in M. Di Bitetto et al eds, *Public Management as Corporate Social Responsibility* (Berlin: Springer, 2015).

³⁸ R. Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York: Free Press, 1962), 1911.

³⁹ An overview of the development of organizational thinking can be found in an international bestselling book written by McKinsey management consultants: T. Peters and R.H. Waterman Jr, *In Search of Excellence* (New York: Harper & Row, 1982).

⁴⁰ E. Mayo, *The Social Problems of an Industrial Civilization* (London: Routledge & K. Paul, 1949); and C.I. Barnard and K. Richmond Andrews, *The Functions of the Executive* (Cambridge, Massachusetts, Harvard University Press 1971).

⁴¹ C.E. Lindblom, ‘The Science of Muddling Through’ 19 *Public Administration Review*, 79 (1959).

William A. Niskanen formulated the theory of the budget-maximizing bureaucrat.⁴² Niskanen, as do many authors in this field, views bureaucracy in a neutral fashion. Bureaucracy is a non-profit organization in which the executive does not appropriate a portion of the difference between income and cost. Niskanen posits a maximizing behavior for the non-profit manager, comparable to the profit-maximizing behavior of the manager of a private firm. But non-profit managers do not maximize profits; rather, they maximize their organization's budget. In subsequent revisions, this notion of the budget is amplified by identifying wider areas of behavior that are not subsumed under the umbrella of profit maximization, making it sufficient to work on budget maximization. Niskanen develops a micro-economics of bureaucracy that is as powerful as the profit-maximizing model of the business firm. One of the insights resulting from the Niskanen model is that bureaucracies either over-deliver, when demand is weak, or under-deliver, when demand is strong: they never get it right. Bureaucracies' factors of production are over-compensated. Niskanen contends that bureaucracies are also present in the private sector, in the form of departments in businesses that are not directly connected to production or market results. Niskanen proposes several remedies for bureaucracies' predicament, all concerned with bringing competition – virtual or real – into the public sector. Virtual competition is understood as benchmarking of performance, which should take place through the development of non-monetary measures of output and outcomes.

Harvey Leibenstein opposed the maximizing view of economic agents and formulated the theory of X-efficiency.⁴³ He posits a non-maximizing behavior in organizations, both public and private: not all human beings strive for maximization. Leibenstein applies his theory to economic development, insisting that in developing countries people do not spontaneously maximize an objective. There are cultural and historical reasons for this. The idea is that the maximization of any organizational end (profit, budget, influence), still a notion of a Weberian flavor, should be demonstrated and not be assumed *ex ante* as a universal parameter of organizational conduct.

Oskar Morgenstern highlights the prevalence of non-competitive organizations in the economy.⁴⁴ He underlines the relative unimportance of the profit-maximizing business firm when the economy is mostly composed of non-competitive, non-profit, monopolistic organizations, both private and public. The implications of this on the present research are significant, focusing as it does on the monopolistic organizations typical of the public administration.

As noted above, Charles Lindblom described organizational behavior as

⁴² W.A. Niskanen, 'Non-market Decision Making: The Peculiar Economics of Bureaucracy' 58 *American Economic Review*, 293 (1968).

⁴³ H. Leibenstein, *General X-Efficiency Theory and Economic Development* (New York: Oxford University Press, 1978).

⁴⁴ O. Morgenstern, 'Thirteen Critical Points in Contemporary Economic Theory: An Interpretation' 10 *Journal Economic Literature*, 1163 and 1184 (1972).

‘muddling through’. His ‘The Science of Muddling Through’⁴⁵ is applicable to all organizations, public and private, as is his ‘Still Muddling, Not Yet Through’.⁴⁶ Lindblom finds that people do not optimize: in their decision-making and organizational life, people just try to improve the present situation, making incremental changes. By way of analogy, the New Institutional Economics (NIE) talks about incremental changes and the time it takes for change to happen.⁴⁷ This view comes very close to that of the Austrian School of Economics, the economic theory of which claims there is in fact no steady-state equilibrium, but only a move towards an ever-changing point of equilibrium.

This is a matter of perspective. Lindblom paints a picture in which the organization is underperforming, which raises the question: underperforming relative to what? If there is no optimum (that is, no point of reference to what is optimum), who is to judge underperformance? The only possible metric of performance derives from competition, ie, through a comparison with how other, similar organizations are performing. Competition and comparison have the same root, which is one of plurality, meaning at least two with an implication that more is better.

Herbert Simon formulated the notion of ‘satisficing’ behavior. He developed a model that assumes ‘bounded rationality’ in individuals that operate within organizations.⁴⁸ Non-maximization is inherent in this model as well. A level of behavior is aimed at that is described as ‘satisficing’ – one that keeps the actors safe from reprimand and is regarded as sufficient by the higher echelons of the organization or by the public.

Graham Allison made explicit the difference between different possible models of organizational behavior and Weber’s model.⁴⁹ He developed two models of bureaucracies and the political process that are ‘deviant’ from the – often implicit – Weberian rational model of organizations. The Weberian model applies to the profit-maximizing business firm as well as to the public administration, inasmuch as everyone in the organization acts in unison with one purpose. No personal goal intervenes in the process or weakens the organization’s performance. The first alternative model that Allison proposes is one in which organizational behavior is driven by standard operating procedures (SOPs). Organizations’ output at time t will be the same as their output at $t-1$. But such behavior may be at odds with rational objectives. The classical example is Allison’s study in which the positioning of intercontinental ballistic missiles in Cuba in 1962 should not be interpreted as implying a premeditated attack by the USSR on the USA but is simply the implementation of Soviet weapons deployment procedure throughout allied

⁴⁵ C. Lindblom, ‘Still Muddling, Not Yet Through’ 39 *Public Administration Review*, 517 (1979).

⁴⁶ *ibid.*

⁴⁷ O.E. Williamson, n 28 above.

⁴⁸ H.A. Simon, n 27 above.

⁴⁹ G. Allison and P. Zelikow, n 16 above.

countries. The second Allison model examines the position of individuals in relation to one another. These include relationships of power between individuals, relationships of affiliation, and historical relationships among individuals, all of which may account for their behavior just as much as their pursuit of a rational and common objective. Allison's models are relevant to our research because they demonstrate that organizations – indeed, public organizations – behave very differently from the Weberian model: individuals within organizations pursue their own agendas, and these may include many variables that have no connection with the organization's express mission. This is not to imply individuals' ill will, or even awareness of their conduct, and indeed they may be acting with the best intentions.

Aaron Wildavsky and Jeffrey Pressman emphasize the role of implementation.⁵⁰ They highlight the unintended consequences of interaction among different organizations. Although their focus is inter-organizational behavior, the model may be scaled down to apply to the behavior of departments within one large organization. Wildavsky and Pressman demonstrate that statements of intent amount to very little. What matters is the actual output and outcome of the whole process, which, they argue, will inevitably differ from the initial statement. This is their rationale for focusing on implementation. Implementation is highly relevant to public administration: in the literature as well as in public discourse, implementation is often put forward as constituting public administration's key role within wider government – legislatures and politicians formulate policies and write laws; public administration is entrusted with their implementation. These authors show us that public administration's organizational behavior may lead to unintended consequences.

James and Larissa Grunig emphasize how organizations are run by a 'dominant coalition'.⁵¹ The Grunigs are responsible for elevating public relations to a sub-discipline within the management sciences, on a par with marketing and finance. They insist on the notion of a dominant coalition as an organization's de facto governing body. This is an admission that organizations behave more like electoral districts than the rational pyramid depicted in organizational charts.

As with organizational science, a revision of the early models has taken place within the theory of the business firm as it has already been said. This has been the task of the New Institutional Economics (NIE), from Coase⁵² to Williamson. Whereas the Max Weber rational model was the basis for the neoclassical 'black box' model of the profit-maximizing business firm, NIE, with

⁵⁰ J.L. Pressman and A.B. Wildavsky, *Implementation: How Great Expectations in Washington Are Dashed in Oakland: or, Why It's Amazing That Federal Programs Work at All, This Being a Saga of the Economic Development Administration As Told by Two Sympathetic Observers Who Seek to Build Morals on a Foundation of Ruined Hopes* (Berkeley, CA: University of California Press, 1973).

⁵¹ J.E. Grunig, D.M. Dozier and L.A. Grunig, *Manager's Guide to Excellence in Public Relations and Communication Management* (London: Routledge, 1995).

⁵² R.H. Coase, 'The Nature of the Firm' 4 *Economica*, 386 (1937).

its transaction cost theory, followed by its principal-agent theory, explained that workers, managers, stockholders, and indeed everybody in an organization each have their own agenda and objective function that they seek to maximize.⁵³ Thus NIE cracks open the black box of the neoclassical firm.⁵⁴ This article has the underlying ambition of building on this theory and further contributing to opening the black box of Weberian public administration. Oliver Williamson and the New Institutional Economics (NIE) looked deeper into the micro-mechanisms at work within the business firm. Williamson⁵⁵ is interested in transaction costs in the private business firm and on the boundaries between a firm and the rest of the economy. These boundaries are more blurred than current discourse might indicate. Williamson notes that managers aim to maximize profits, along with a number of other things, but he does not examine the workings of public administration. It is an intended contribution of the present work to extend Williamson's findings to public organizations.

This overview of neo-Weberian thinking would not be complete without mentioning New Public Management (NPM) which has been the basic staple of government reform since the early 1990s. NPM – and criticism of NPM – however appears to have been concerned more with the practical arrangements of public administration and the consequences of its practice, than with the tracing back to the possible theoretical underpinnings of its innovation.⁵⁶ In doing so, it appears to be possibly missing the opportunity for identifying further and wider consequences of the criticism it implicitly leveled at current Weberian thinking.

The aim of this brief overview has been to offer synopses of the contributions of some authors – both in the economics and the sociology of organizations – who present views of organizations that different from the Max Weber rational model. This article proposes grouping these contributions under the syncretistic label of 'administrative behavior hypothesis'. This administrative behavior model remains on the same plane as the Weberian model: each is a view about organizations' actual behavior.

Although the limits of Weberian thinking do not seem to be widely appreciated in public administration, nonetheless some explicit intimations of such a realization can be found. For instance, the Building State Capability program of the Harvard Center for International Development acknowledged that

'to escape the trap of stagnant capability and increasing frustration,

⁵³ O.E. Williamson, *The Economics of Discretionary Behavior* n 28 above; Id, 'The New Institutional Economics' n 29 above.

⁵⁴ R.H. Coase, n 52 above.

⁵⁵ O.E. Williamson, *The Economics of Discretionary Behavior* n 28 above; Id, 'The New Institutional Economics' n 29 above.

⁵⁶ A.C.L. Davies, 'Beyond New Public Management: Problems of Accountability in the Modern Administrative State', in N. Bamforth and P. Leyland eds, *Accountability in the Contemporary Constitution* (Oxford: Oxford University Press, 2013), 333.

new conceptual models of state capability that go beyond the transplantation of the 19th century Weberian state are required'.⁵⁷

Adhering to a view – the ‘administrative behavior hypothesis’ – that is more likely to predict organizational behavior and future response by public administrations is the means by which proper organizational arrangements will be sought in pursuit of the implementation of laws. Conversely, adopting organizational behavior hypotheses that are less performing in predicting organizational behavior is more likely to lead to unintended consequences within law-making. Both behavioral hypotheses represent an intermediate step in the formulation of law and the proper implementation of it.

6. One Important Difference Between Public and Private Organizations: Monopoly

The administrative behavior hypothesis calls attention to one specific organizational arrangement that all public administration organizations worldwide tend to embody: monopoly. But bureaucracies comprise people with their own agendas and objectives: they tend to be self-serving, both in the private and the public sector – bureaucrats are human beings, of course, just like managers and employees in private enterprise. The only difference, but the critical one, is that bureaucracies are established under monopolistic organizational arrangements, and, importantly, as a result there is no evaluation, no internal, micro-level, checks and balances. Monopolistic organizational arrangements of public administration would seem to preclude any constitutional procedural language regarding the internal functioning of organizations. Whereas constitutions are concerned with checks and balances as regards relationships among the branches of political power, they tend to be silent about conduct within public administration, implicitly trusting the Weberian hypothesis that public administration will behave rationally, in the sense of producing the intended outcomes. The lack of checks and balances makes public organizations behave in an undesirable way.⁵⁸ Recall *House of Cards* protagonist Claire Underwood when she says her non-profit organization ‘is a charity, but not for our employees’.⁵⁹ However, ironically, in real life monopolistic non-profit – ie, public administration – organizations actually do behave as charities for their own employees. Novelist Ian McEwan succinctly

⁵⁷ *Building State Capability*, available at <https://bsc.cid.harvard.edu/>. The website is active as of 28 October 2019; however, at the 2016 date of consultation it included the citation, which at the time of publication is no longer available. We can think of this circumstance as citing the first edition of a book that no longer contains the citation in its second edition. Note that the Harvard Center for International Development (HCID) is located within the Harvard Kennedy School, mentioned by Ackerman as an example of the propagation of Weberian behaviour.

⁵⁸ J. Drèze and A. Sen, *An Uncertain Glory: India and its Contradictions* (Princeton, NJ: Princeton University Press, 2013).

⁵⁹ *House of Cards*, series 1, episode 4.

articulates the point we are making about public law; in *Sweet Tooth* (2012),⁶⁰ on the subject of the expansion of the British intelligence service, he says:

‘Any institution, any organization eventually becomes a dominion, self-contained, competitive, driven by its own logic and bent on survival and on extending its territory. It was inexorable and blind as a chemical process’.

7. Testing Behavioral Hypotheses Through the Parsons AGIL Model

Here we will compare the two hypotheses about the conduct of public administration organizations in terms of the Parsons AGIL model of living systems.⁶¹ The four AGIL functions are: Adaptation, Goal attainment, Integration, and Latent pattern maintenance. We can see that the living system in question, public administration, when behaving according to the administrative behavior hypothesis, performs the AGIL functions better than a system behaving according to the Weberian hypothesis. This is because the administrative behavior hypothesis sees public administration as less dependent on politics than the Weberian hypothesis. In fact, according to the latter, public administration is a docile instrument in the hands of politics: politics adapts public administration to its own needs (Adaptation); politics sets goals for public administration (Goal attainment); and politics dictates public administration’s future (Latent pattern maintenance). So, within a Weberian hypothesis, three of the four metrics are outside the organization’s control. However, within the administrative behavior hypothesis, public administration strives to be independent of politics (ie, it retains its own Goal attainment).

The AGIL model may in fact help explain the wide public acceptance of the Weberian model. Under the administrative behavior hypothesis, it is actually in the interest of public administration to represent itself as Weberian, because such a concept of public administration maximizes the social status of its employees in comparison with those in other sectors.

8. Empirical Evidence: The Monopolistic Salary Gap

Empirical evidence of such self-serving behavior on the part of public administration is provided by International Monetary Fund data (see below *Table 1*)⁶² showing that the remuneration of public administration employees worldwide is higher than in the manufacturing sector and lower only than the (much smaller)

⁶⁰ I. McEwan, *Sweet Tooth* (New York, NY: Nan A. Talese/Doubleday, 2012) (a good read on bureaucracy in the UK secret service).

⁶¹ T. Parsons, R.F. Bales and E.A. Shils, *Working Papers in the Theory of Action* (Princeton, NJ: Princeton University Press, 1953).

⁶² IMF, ‘Evaluating Government Employment and Compensation, Technical Notes and Manuals’ (15 October 2010).

financial sector,⁶³ thus debunking conventional wisdom about underpaid public sector employees. The root cause of high salaries is easily explained as a monopolistic rent by labor, with labor being a production factor of public administration's monopoly, thus sharing in the benefits of such monopoly status.

Table 1: *Global public sector wages in relation to other economic sectors*⁶⁴

	<i>Number of countries in the study</i>	<i>Ratio of average PA wage to per capita GDP</i>	<i>Ratio of PA to financial sector</i>	<i>Ratio of PA to manufacturing sector</i>
<i>Africa</i>	3	1.3	0.7	<u>1.8</u>
<i>Asia and Pacific</i>	7	1.4	0.9	1.4
<i>Europe</i>	28	1.4	0.7	1.3
<i>Western Hemisphere</i>	11	1.4	0.8	1.3
<i>Middle East and Central Asia</i>	8	1.2	0.5	1.3
<i>European Union</i>	17	1.3	0.7	1.3
<i>Low-income countries</i>	4	<u>1.9</u>	0.7	1.4
<i>Middle-income countries</i>	35	1.4	0.6	1.4
<i>High-income countries</i>	18	1.2	0.8	1.3

PA: public administration

In summary, Part II has presented a critique of the Weberian hypothesis on the impartial behavior of public administration organizations, which underlies the argument for the separation of politics from administration. The possible shortcomings of public law have been shown to be linked with the obsolescence

⁶³ The financial sector is about one-tenth the size of public administration.

⁶⁴ The figures underscored are worth commenting on: low-income countries have the highest PA-to-manufacturing ratios (Africa: 1.8 PA/manufacturing; low-income countries: 1.9 PA/GDP), implying that being a civil servant in low-income countries is a bigger privilege than it is in non-low income countries.

of the model of 'Weberian culture'. An alternative hypothesis, the administrative behavior hypothesis, has been formulated through references to strands of thought ranging from organizational behavior to micro-economics, and the literature that separates us from Weber. Theoretical critique was followed by an example of empirical evidence in order to substantiate the claim that the administrative behavior hypothesis is indeed an effective tool in explaining the reality of public administration and predicting its behavior. It is therefore asserted that public law would benefit by factoring the administrative behavior hypothesis into its theories and prescriptions. For these reasons we answer the title question of this article in the negative: we cannot afford to separate politics from administration. In the next Part, a basic example will be offered as to how public law could integrate the administrative behavior hypothesis into its framework.

III. Conclusion

1. The Implementing Executive

The hypothesis of Weberian behavior on the part of public administration accounts for the lack of attention that has been paid so far to implementation when designing politics and, subsequently, policies. On the basis of an alternative 'administrative behavior hypothesis', in this article a case has been made against the separation of politics from administration within the executive branch. This new hypothesis does not, however, imply reductionism, because there are more ways of curbing the possible negative consequences of hierarchical continuity between politics and administration. As an exercise in Ackerman's 'institutional imagination',⁶⁵ let us then put forth a first proposal and identify one possible way to integrate the administrative behavior hypothesis with the current Montesquieuian model of separation of powers, as it is applied in the USA and Europe, Ackerman's focal countries.

In the domain of the separation of powers, the capabilities of the executive branch, which has come to be pre-eminent among the Montesquieu powers, probably need some rethinking. Ackerman's preference for the European parliamentary systems to the presidential model is driven by a desire to curb the pre-eminence of the executive in the US conjugation. The Weberian approach to public administration has led parliaments and executives (and the public after them) to concentrate on legislation and abandon implementation in the hands of public administration. Besides, the (imperfect) idea gained traction that to deal with a new situation, government needed to pass a new law. On the other hand, the administrative behavior hypothesis requires that the executive concentrates on the implementation of existing law; this is, after all, its own unique political function per Montesquieu. Therefore, to integrate the administrative behavior

⁶⁵ B. Ackerman, n 1 above, 688.

hypothesis we need to make a normative about-face: leave legislative power to parliament and deprive the executive branch of the capability of proposing laws. This view is one of an ‘implementing executive’, a ‘purist’ interpretation of Montesquieu: the executive branch should implement the laws passed by parliament.⁶⁶ The executive should not use its parliamentary support to study and propose new laws, as is the case today, both in Europe and the USA. Executive branches today spend most of their time and energy competing with parliaments over new laws.

So, in a nutshell: in applying the administrative behavior hypothesis to the executive, we would like to limit the capability of the executive branch to put forth legislation, so that it instead concentrates on the implementation of laws and the management of the bureaucracy. Such a provision should also diminish pressure to produce new legislation. With the pressure to produce new laws reduced, parliament, in turn, could focus on overseeing the executive’s management of public administration, and, critically, its actual outcomes in the real world. Likewise, parliament could practice scrutiny of the judiciary’s effectiveness.

The implementing executive is a well-balanced proposal because, on the one hand, it reinforces the executive – overcoming the time-worn and theoretically unsustainable separation of politics from administration – and, on the other hand, it deprives the executive of a large share of the power currently perceived to be at its disposal. The implementing executive meets Ackerman’s objective whereby:

‘Constitutionalists should, therefore, extend their thinking to embrace the distinctive structural problems involved in controlling the fourth branch of

⁶⁶ Habermas himself seems to appreciate the role of implementation: ‘Democratic theory suffers from an ‘under-thematization’ of the executive moment, or management, which often gets demonized as the usurper of previously exercised legislative functions.’ J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), 192. We seem to have arrived from a different angle into a discussion that has been going on for a long time. Habermas says exactly the same thing: the executive should just act as an ‘administrative body’. For instance, ‘The logic of separated powers demands instead that the administration be empowered to carry out its tasks as professionally as possible, yet only under normative premises not at its disposal: the executive branch is to be limited to employing administrative power according to the law’ (at 188). Ferrara offers a wider discussion of this: ‘An administration limited to pragmatic discourses’ argues Habermas, ‘must not disturb anything in this universe (of differentiated kinds of discourses) by its contributions’ (at 192). This understanding of the executive as a moment of mere administration, based on formal rationality alone, appears more adequate to capture the function of a bureaucracy than the function of governance. The difference between a government and a bureaucracy is overlooked by Habermas because he fails to realize that the programmatic points on which a head of government receives a mandate from the legislature or from the electorate are not to be understood as exhaustive of the governmental action. ... The difference between a government and a bureaucracy lies precisely in the interpretive leeway, much larger in the former case ... that each is allowed in interpreting its own mandate’. A. Ferrara, *Justice and Judgment: The Rise and the Prospect of the Judgment Model in Contemporary Political Philosophy* (London-Thousand Oaks, California: SAGE, 1999), 57.

government: the bureaucracy’.

The implementing executive widens the options of politics, in the ‘openness’ view of Ferrara:⁶⁷ no longer would there be a single top political position to be sought, the executive premiership. Parliamentary leadership would become equally enticing to a career politician. The outcome of the present argument is germane to Steven Calabresi’s ‘Democratic Legitimacy: the Cabinet and the Bureaucracy’ in his early critique of Ackerman’s article.⁶⁸ However a different argument has been developed in this article.

It is however a more complex proposition to frame the implementing executive within Eric Andrew Posner and Adrian Vermeule’s⁶⁹ perspective. Posner and Vermeule justify their approach on the basis of effectiveness of action, or perhaps of reaction, in relation to specific contingencies requiring fast response such as 11 September 2001, or civil war, or the financial near-meltdown of 2008. Admittedly, the implementing executive has no specific sensitivity to emergency issues: it stems from a global view about public administration, and is concerned with the work of about half a billion employees of public administration globally,⁷⁰ considering their general underperformance as Weberian bureaucrats and their compliance (even in the West) with the administrative behavior hypothesis. This is not to say that the implementing executive is necessarily less effective in dealing with emergencies. On the contrary, the very *raison d’être* of the implementing executive is a focus on action and real-world positive impact.

The implementing executive is probably an impossible option right now for developed democracies, as it currently remains some distance outside the norms of public perception. However, it might not be such a far-fetched proposition in some of the world’s democratizing polities. The administrative behavior hypothesis provides a robust governance system for the effectiveness of democracies around the world, as it appears to be within the democratic horizons of those one hundred ninety-three countries currently within the United Nations where there is clearly no Weberian culture. And, in any case, an extreme case as formulated here can serve as a template for incremental reform in the long-established democratic polities.

⁶⁷ A. Ferrara, n 24 above.

⁶⁸ S.G. Calabresi, ‘The Virtues of Presidential Government: Why Professor Ackerman Is Wrong to Prefer the German to the U.S. Constitution’ 18 *Constitutional Commentary*, 51 (2001). Calabresi later elaborated his argument in a prescription about the European Union’s possible constitutional future: S.G. Calabresi and Kyle Bady, ‘Is the Separation of Powers Exportable?’ 33 *Harvard Journal of Law & Public Policy*, 5 (2010).

⁶⁹ E.A. Posner and A. Vermeule, *The Executive Unbound: After the Madisonian Republic* (Oxford: Oxford University Press, 2010).

⁷⁰ This article takes ‘the view from below’ to public administration: R.S. Brower and M.Y. Abolafia, ‘Bureaucratic Politics: The View from Below’ 7 *Journal of Public Administration Research and Theory*, 305 (1997).

The theoretical possibility of integrating the administrative behavior hypothesis within the Montesquieuian model should be good news for public law. Relinquishing the Weberian hypothesis before speaking of separation of powers leads to a reversal of fronts *vis-à-vis* Ackerman's predicament:⁷¹ constitutional theory is needed because we do *not* have a Weberian culture. The effectiveness of the executive thus becomes conceptually independent of Weberian assumptions about bureaucratic behavior.

The implementing executive seems to finally answer Dante Alighieri's question: 'Laws indeed there are: But who is he observes them?'⁷²

2. Future Studies

Future studies could develop more ways for the 'taming' of public administration, when it is supposed to behave according to the administrative behavior hypothesis. Research might provide recommendations in the following domains: organizational arrangements of public administration, constitutional reform, and supranational institutions and organizations, in the footsteps of the studies that have been leveraged here to argue the obsolescence of the Weberian hypothesis.

On the specifics of the separation of politics from administration, a case for the 'hierarchical integrity' of the executive branch as a whole, comprised of politicians and bureaucrats, from the perspective of conventional organizational theory, could also be pursued. Functional specialization does not warrant hierarchical separation of functions. This argument was not pursued here for the sake of focus.

Through this work on the separation of powers, a general point is made about public law: public law makes an implicit hypothesis of Weberian behavior on the part of public administration: such an assumption needs further investigation. Also, the rational-legal source of authority, in the classical Weberian three-partite taxonomy, may need further investigation. It is rational, but for whom? In general, future studies could investigate what follows when the argument put forth in this article is considered.

This article also revealed a theme of rivalry – rather than healthy competition – among the three classical branches of power, in law production. Therefore, future research could work on devising models to make the relationship among the three powers healthy rather than antagonistic. Organizational separation and constitutional checks and balances do not appear to be enough to establish positive competition that leads to improvements and good results for the population.

⁷¹ B. Ackerman, n 1 above, 687, 'Before functional separation can make sense, there must be the makings of something I shall call a "Weberian culture".'

⁷² D. Alighieri, *The Divine Comedy. Purgatory. Canto XVI*, translated by Henry F. Cary (New York: P.F. Collier & Son, 1909-14), vol XX, available at <https://tinyurl.com/ssctv9d> (last visited 30 December 2019).

Future studies could investigate an extension of the administrative behavior hypothesis to the behavior of the three Montesquieuian powers themselves. For instance, the current resurgence of populism⁷³ could be interpreted as a failure of the powers (parliament, executive, and judiciary) to gauge social problems and to channel popular sentiment, which is passionate. Such failure may derive from a bureaucratic insulation of the powers from the people, which itself could be explained by the administrative behavior hypothesis applied to the powers themselves. That is, contrary to the Montesquieuian model of efficient competition between the three powers in the service of the people, the three powers behave in a self-serving fashion and become secluded from the people, thus leaving an empty political space at the mercy of forces defining themselves anti-political, or populist.

This article has put forward a possible way in which political science, public law, and management can collaborate towards a culture of implementation. Building on Ackerman's explication of the Weberian hypothesis, through the formulation of an alternative administrative behavior hypothesis, the importance of executive implementation has been brought to the foreground. A place has been found for implementation and outcome assessment within the constitutional order. Legitimacy of law is a necessary condition for a sustainable well-ordered society, but it is not a sufficient condition: legitimate rules may not be effective and therefore may not be sustainable. This is where public management and public policy analysis come into play in the constitutional domain. Management sciences bring to constitutional studies the promise of being applicable the world over.

⁷³ Examples of the resurgence of populism are provided by the electoral victory of Arvind Kejriwal in the district of New Delhi, India, December 2013, on an anti-corruption platform. Kejriwal resigned his top post the following spring. Jimmy Morales, also a comedian, won the Guatemala elections of October 2015. Real estate entrepreneur and media icon Donald Trump won the US presidency in November 2016. Finally, in Italy, comedian Beppe Grillo and his 'Five Star Movement' attracted one-third of the electorate in national elections in 2013 and gained executive power in 2018.