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TENUOUS LEGITIMACY: THE ADMINISTRATIVE STATE, THE
ANTIGOVERNMENT MOVEMENT, AND THE STABILITY OF THE UNITED
STATES CONSTITUTIONAL DEMOCRACY

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TENUOUS LEGITIMACY: THE ADMINISTRATIVE STATE, THE
ANTIGOVERNMENT MOVEMENT AND CONSTITUTIONAL DEMOCRACY

SHELLY L. PEFFER

ABSTRACT

The public administration literature is inundated with books and articles despairing about the legitimacy crisis in the field. There have been numerous bases proposed for legitimizing the administrative state, including expertise, virtue or public service, and leadership and vision. Yet the issue remains contested, and the lack of agreement has wide reaching implications. One underexamined implication is the role this tenuous legitimacy has in weakening the administrative state's ability to temper antigovernment sentiment. This dissertation explores the connections and patterns in the ideologies, actions, and philosophical foundations of strongly held views that the administrative state is an illegitimate democratic institution. These domestic antigovernment ideologies are illuminated through case studies of the sovereign citizens' movement, the modern militia movement, and the patriot movement. By studying these groups it becomes clear that the antigovernment ideology is, at least partly, a result of these groups' interactions with the administrative state. The implication of these cases is that the current legitimacy arguments are ineffective in countering these strongly held antigovernment sentiments. This research argues that in order for citizens to not only believe the administrative state is legitimate, but also to experience this, the administrative state must be legitimized in practice not in theory. For public administrators legitimizing the administrative state must include a more direct relationship with citizens in the practice of expertise, virtue and public service, and leadership and vision. Through this practice, not a tenuous

theory, public administrators may be able to start repairing the relationship they have with citizens and truly legitimize the administrative state.

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CHAPTER I

INTRODUCTION: SETTING THE STAGE

I think of the tragedy in Oklahoma City in 1995. When the smoke cleared, the administration's reaction was not to discover the underlying cause of why citizens wished to strike out at their government. Instead, the response was to add a thousand men to the FBI, as if a thousand or even ten thousand more armed officers could prevent a similar tragedy.

—Gerry Spence

Giving money and power to government is like giving whiskey and car keys to teenage boys. —P.J. O'Rourke

Government is not legitimate merely because it exists.

—Jeane J. Kirkpatrick

George Sibley and Lynda Lyon met at a Libertarian Party meeting and became the poster couple for the antigovernment movement. When the couple met, Mr. Sibley was living off an inheritance and was attracted to the antigovernment sentiment of the group. He had a deep mistrust of the federal government and was concerned about the gun laws, income taxes, and welfare. Ms. Lyon, a former model, was the rebellious daughter of an Orlando, Florida socialite who had her own self-published antigovernment newsletter. Within months of their meeting the couple were referring to each other as husband and wife. They were never legally married because they refused to obtain a

marriage license, believing the state had no right to force them to submit to the licensing process.

The couple, believing the United States government and their agents were illegitimate, decided to live off the grid, withdrawing from a system they felt deprived them of their rights and respect as citizens. They got rid of their driver's licenses and car registrations, their birth certificates, and refused to pay taxes, "in the belief that the state and federal law says people don't really have to submit to such intrusions" (Pearson 1996). To back up this view both Mr. Sibley and Ms. Lyon would cite arcane legal theories and court decisions.

The couple might have continued their lifestyle indefinitely; however, in August 1992, the couple were arrested and charged with aggravated burglary and assault in a stabbing incident involving Lyon's former husband (*Sibley v. State*, 775 So.2d 235[1997]). Both Mr. Sibley and Ms. Lyon entered a plea of nolo contendere to the charges and were due to be sentenced on September 10, 1993 (*Sibley v. State*). The couple did not appear for the sentencing hearing and the Court issued a writ of arrest.

The events that followed are well reported in the case of *Sibley v. State*, 775 So.2d 235 (1997).

On October 4, 1993, [Mr. Sibley] was parked near a Big B Drug in Pepprell Corners Shopping Center in Opelika, Alabama. Lyon was using a pay telephone outside the store and [Sibley] stayed near the car with [Lyon's 9 year old son Gordon].

A passerby...heard the child ask for help. Worried that the child was in danger, she kept an eye on [Sibley's] vehicle as it moved to a different location in the parking lot...

As Sgt. Roger Motley of the Opelika Police Department came out of the store in the shopping center, [the passerby] reported to him what she had observed. Motley, a uniformed officer, had been running an errand for the

police department. After the situation was reported to him, Motley approached the vehicle...

At that point, [Sibley] got out of the vehicle as Motley approached. Meanwhile, Lyon was using [a different pay phone]. Prior to approaching [Sibley], Motley radioed to the Opelika Police Department as to his activities with respect to investigation of this incident....

Motley approached [Sibley] and asked for his driver's license. [Sibley] stated that he did not have one because he had no contracts with the State. Motley then requested identification...

At that point, [Sibley] pulled a pistol from a concealed holster on his person and began firing at Motley. Motley attempted to get away from [Sibley] and ran behind his vehicle for cover. The officer then began returning fire....

Meanwhile, Lyon heard the shooting and ran toward the patrol car. She pulled a pistol from her purse and began firing at Motley from his rear.

The officer was finally able to get into his patrol car and radio for help. The patrol car started to move through the parking lot in an erratic manner, hitting several vehicles as it moved prior to coming to a stop....Motley was mortally wounded.

[Sibley], Lyon and the child sped away from the scene (244-45).

Both Mr. Sibley and Ms. Lyon were eventually apprehended and charged with capital murder.

Mr. Sibley and Ms. Lyon were tried separately, with Ms. Lyon choosing to act as her own attorney. Their basic legal argument was they shot the officer in self-defense and the killing was legal. The jury did not accept the self-defense claim and both defendants were sentenced to death. Mr. Sibley and Ms. Lyon appealed their convictions, again acting as their own counsel. On appeal, the couple claimed they had proof they were innocent, and according to Mr. Sibley, would "topple the entire judiciary and set them free: a constitutional amendment, long suppressed by the government, outlawing 'titles of nobility,' which they interpret to mean licenses such as those lawyers need to practice

law” (Pearson 1996). As Ms. Lyon stated, “[t]here has to be a point at which you decide I’m not going to take injustice anymore...The fact that he had a badge and a gun makes no difference to me” (Pearson 1996).

The secret constitutional amendment that was the linchpin of Mr. Sibley and Ms. Lyon’s appeal has a legendary status among those in the antigovernment movement. “Believers say that it was ratified in 1819 and prohibits lawyers and others with government licenses from serving in public office” (Pearson 1996). There are apparently several 19th century copies of the United States Constitution that include the amendment. Believers say the amendment “means that lawyers, judges, prosecutors—even police officers—are all in office illegally. Thus, Motley was just a thug trying to kidnap Sibley and the judges who sentenced [the couple] to death are constitutionally powerless” (Pearson 1996).

History does not backup Mr. Sibley and Ms. Lyon’s claims. The amendment, however, did exist. Congress approved the amendment in 1811 in anticipation of a second war with Great Britain. Constitutional law scholars say the amendment “would have outlawed public service by Americans who took knighthoods or other titles from foreign governments” (Pearson 1996). The scholars also agree—the amendment was never ratified.

In an interesting twist to an already bizarre case, the couple refused to appeal their case to the courts. In every state, when a death sentence is imposed, the appeals process is automatic and mandatory. However, because Mr. Sibley and Ms. Lyon did not recognize the legitimacy and, therefore, the jurisdiction of the courts, they stated they would only appeal to Congress to overturn their convictions. In 2002, Ms. Lyon stated:

“I refuse any actions by attorneys, or groups of attorneys, either hired by others or on their own initiative, to file documents on my behalf...” (Reeves 2002).

Lyon further denied that she and Mr. Sibley were antigovernment extremists. In a 2002 interview with *The Birmingham News*, she stated:

The fact that some of us are vocal about the abuses we’ve seen and encountered makes us no more anti-government than such well-known organizations as the National Association for the Advancement of Colored People or the National Organization for Women, who have similar complaints. The fact that we are shocked and angered by the callous, overkill manner in which incidents at Ruby Ridge and Waco were handled by government agencies does not mean that we approve of the beliefs and lifestyles of the Weaver family or the Branch Dividians. Our story of overstepping authority by an Opelika policeman had a different ending because George and I refuse to be victims. We fought back, and for that, we are to be executed and our reputations forever ruined. (Bailey 2002)

The mandatory appeals filed on behalf of Mr. Sibley and Ms. Lyon were denied and Congress did not provide the redress the couple sought. Lynda Lyon was executed by electrocution in 2002 at the age of 54. She was the first woman put to death in Alabama in almost 50 years. Mr. Sibley was executed in 2005 by lethal injection at the age of 62. After being strapped to a gurney in the execution chamber, Mr. Sibley said “[e]veryone who is doing this to me is guilty of murder” (Flynn 2005).

The beliefs held by Mr. Sibley and Ms. Lyon are held by many in the antigovernment movement. They believe contemporary American government and its agents—embodied in the administrative state—have lost touch with the founding ideas of the country and, as a result, are illegitimate institutions. They question the authority these government agents act under and attack the contemporary bases of authority with the words of the founding fathers. The term “antigovernment” is really a misnomer for

these individuals; they are not antigovernment in a general sense; instead, they are anticontemporary-American-government.

When scholars or the media discuss antigovernment groups, they often do not talk about the groups' views regarding the administrative state. It is the individual's interactions with the administrative state, however, that generally shape the individual's view of government. This is the arena in which they have personal contact with government and where they often feel they are at the mercy of the government and its agents. It was this lack of research on the antigovernment sentiment and the administrative state, along with the administrative state's unending quest for legitimacy that piqued my interest in the subject and led me to wonder whether the administrative state itself was in some way partly responsible for this antigovernment sentiment.

The legitimacy of the administrative state is one of the enduring questions of the field of public administration. At the heart of the legitimacy issue is the question: How are nonelected, nonpolitically appointed, professional public servants held accountable for their discretionary actions in a constitutional democracy? In 1993, *Public Administration Review* published a forum discussing the issue of the constitutional legitimacy of public administration. The debate engaged some of the most thoughtful and accomplished scholars in the field of public administration, including Larry D. Terry, Michael Spicer, John Rohr, Kenneth Warren, Camilla Stivers, Charles Wise, and political scientist Theodore Lowi. With the exception of Kenneth Warren, all of the scholars felt the debate was one of the ongoing big questions in the field and that it had not yet been settled, nor was it likely to be in the near future. Warren, on the other hand, entitled his contribution, "We Have Debated Ad Nauseam the Legitimacy of the Administrative

State—But Why?” Warren’s answer to the question of why the administrative state is legitimate was basically because the law and the majority say it is. In fact, Warren stated that public opinion polls, as well as others, “make [it] clear that the American people, despite their dislike for the administrative state in the abstract, overwhelmingly legitimize its role in American society through their firm approval of the numerous governmental programs that only the administrative state can implement” (Warren 1993, 253). As far as Warren was concerned that was the end of the story. The problem with this argument is it is not the end of the story—it is merely the end of one version of the story.

A vocal, complex, and often troubling, minority has its own version of the story of the legitimacy of the administrative state—a story that has been ignored for far too long. That minority consists of those individuals who make up the membership of domestic, antigovernment groups. These groups are often referred to by the media and scholars as the sovereign citizens’ movement, the militia movement, the patriot movement or the antitax movement. Regardless of the specific movement in question, the individuals involved all have at least one thing in common: In their version of the story, “because we say so” is not a valid basis to rest the legitimacy of the administrative state upon in a constitutional democracy.

In this dissertation, I will explore the issue of why the antigovernment groups do not accept the legitimacy of the administrative state and the resulting implications of their nonacceptance for the stability of the American constitutional regime. I will begin by setting forth the argument that is the crux of the dissertation. I then explore the theory and methodology employed in the dissertation. I explore the history of the debate surrounding the question of the legitimacy of the administrative state. This debate speaks

directly to the stability of the administrative state. Next, I provide three case studies of domestic antigovernment groups—The Republic of Texas representing the Sovereign Citizens movement, The Michigan Militia representing the Militia movement, and We the People representing the Patriot/Antitax movement. These groups are analyzed through several lenses that are commonly accepted means for legitimating the administrative state and through conditions that are present when citizens question their relationship with government.

The questions and themes that are addressed throughout the dissertation are: (1) How do individuals in domestic antigovernment groups perceive their relationship to the government, and specifically, why do they feel the current institutions of government are illegitimate? (2) How do the views and actions of individuals involved in domestic antigovernment groups undermine or enhance the legitimacy of the administrative state, and, in turn, constitutional democracy? and, (2) What are the implications of their views for the administrative state and for American constitutional democracy?

CHAPTER II

RESEARCH QUESTION, ARGUMENT, AND THEORY

Government is not reason, it is not eloquence, it is force; like fire, a troublesome servant and a fearful master. Never for a moment should it be left to irresponsible action. —George Washington

If we can't think for ourselves, if we're unwilling to question authority, then we're just putty in the hands of those in power. But if the citizens are educated and form their own opinions, then those in power work for us. In every country, we should be teaching our children the scientific method and the reasons for a Bill of Rights. With it comes a certain decency, humility and community spirit. In the demon-haunted world that we inhabit by virtue of being human, this may be all that stands between us and the enveloping darkness. —Carl Sagan

Government, even in its best state, is but a necessary evil; in its worst state, and intolerable one. —Thomas Paine

2.1 The Research Question

The public administration literature is inundated with books and articles about the legitimacy crisis in the field. This issue has engaged scholars such as John Rohr (1986), Michael Spicer and Larry D. Terry (1993a,b), Camilla Stivers (1993), and Gary Wamsley and James Wolf (1996), to name a few. Legitimacy in the context here does not merely mean the legality of public administration as a practice; instead it refers to issues related

to the broad acceptance of the administrative state in a constitutional democracy and, just as important, in citizen's lives. There are several legitimacy problems. Perhaps two of the most vexing problems are (1) the administrative state is not authorized in the United States Constitution, and (2) in general, the government's power over citizens is legitimated by the fact that we elect our representatives and can hold them accountable through the election process. However, administrators are nonelected career bureaucrats who are not held accountable to the people through any formal means. These two problems raise the question: What makes administrative power legitimate?

There have been numerous proposed bases of legitimizing the administrative state: expertise, constitutionalism, virtue or public service, leadership and vision, and an eclectic base, to name a few (see chapter 3). The extensive literature brings to the fore the tenuous grasp public administration has on legitimacy. This grasp remains tenuous because there is no universally accepted basis for the legitimacy of an administrative state in our constitutional system of governance. Because of this, the field continues to struggle with the appropriate reach and role of public administration.

The legitimacy discussion is not merely academic. A lack of a common basis of legitimacy has wide-reaching implications, most notably, how are nonelected, nonappointed, public administrators held accountable to a sovereign public? A peripheral, but underexamined, question is what is the role this lack of legitimacy has in formulating a foundation for antigovernment sentiment. In light of these and other crucial questions, it is surprising that lost in the search for a basis of legitimacy is any systematic inquiry into the causes of, or commonalities in the view that the administrative state is *illegitimate*.

This dissertation is an attempt to begin exploring the connections and patterns in the ideologies, actions, and philosophical foundations of the view that the administrative state is an illegitimate democratic institution. Furthermore, it seeks to illuminate the reasons why these antigovernment views exist and persist. And, ultimately, it is a quest to reach a fuller understanding of the consequences that such an ideology has on the administrative state and American constitutional democracy.

At the heart of the argument is the proposition that the common means for legitimizing the administrative state are wholly ineffective when dealing with citizens in the administrative arena—especially those citizens who have become so disillusioned with the administrative state that they have attempted to find refuge in antigovernment movements. Through the exploration of this argument, I will focus on the following questions: (1) How do individuals in domestic antigovernment groups perceive their relationship to the government, and specifically, what are their reasons for believing that the current institutions of government are illegitimate? (2) How do the views and actions of individuals involved in domestic antigovernment groups undermine or enhance the arguments for legitimacy of the administrative state, and in turn, constitutional democracy? and, (3) What are the implications for the administrative state and for American constitutional democracy?

2.2 The Rationale of the Argument and the Theory

There is a troubling minority in America that feels the current institutions of government are illegitimate. There are numerous movements and groups throughout the United States that cater to these individuals and provide them with an outlet for their

antigovernment sentiment. These antigovernment groups generally believe the current United States government is the enemy of the individual citizen. They believe the government—as viewed through state actions, laws, rules, regulations, and policies—has denied the average American citizen their rights and dignities as citizens, and in the extreme, has usurped the sovereignty that is the proper domain of the American people.

It is important to note at the outset that these groups are generally against the *current* methods and practices employed by the institutions of the federal government. Labeling these groups antigovernment is something of a misnomer. The individuals who join antigovernment movements are not against all government. They do not espouse an ideology of anarchy. These individuals generally feel the current United States government has been so bastardized from its original intents and purposes that it has lost any legitimacy it may have once held. The individuals who are attracted to these antigovernment movements generally champion the idea of a government that is more in touch with the average citizen, closer in proximity to the citizen (for example, more local and state government decision making instead of federal imposition of decisions on lower levels of government), emphasizes individual rights, and is more efficient and less wasteful of resources.

Individuals involved in antigovernment movements often express their dissatisfaction with government by attempting to live “off the grid.” This includes withholding taxes, refusing to register vehicles or get proper licenses, disregarding judicial notices (noting that illegitimate United States courts have no jurisdiction), and generally having as little contact with government officials and administrators as

possible. Some of these individuals have gone to the extreme of setting up their own governments and taking violent action against government officials and institutions.

It is important to understand that this antigovernment sentiment is often directed toward the administrative state. It is with administrative agencies that citizens have the most direct contact—the department of motor vehicles, the Internal Revenue Service, social services, child protective services, the health department, and the unemployment agency to name a few. It is through their interactions with these agencies that citizens get a personal look at the practices and methods of the government. It is therefore not surprising these interactions often help to form the citizens' opinion of government. In the case of those involved in the antigovernment movement, they often report extremely negative interactions with these agencies and, consequently, their antigovernment rhetoric often involves the administrative state.

Many citizens, scholars, and government officials pay little attention to individuals involved in the antigovernment movement until an event such as the bombing at Oklahoma City happens. They tend to think of these individuals as irrational and insignificant; this begs the question: on what basis should we treat evidence about the roots of antigovernment feeling in these groups as relevant to weak legitimacy overall? There are two parts to the argument that the antigovernment sentiment is relevant to the legitimacy debate. First, the loss of confidence and trust among ordinary citizens is “writ large” among the antigovernment groups; therefore it is much more apparent. It is true most ordinary citizens do not view government as marauding invaders, but because Americans are just beneath the surface pretty rugged individualists, they are not all that different, only less deeply committed. Most Americans will go along with the idea that at

some point, for example, more taxes are an encroachment on their rights. In essence, these antigovernment groups enable us to see a phenomenon in American political culture that is otherwise easy to ignore, because ordinary citizens do not do anything to “operationalize” their negative feelings, they just accept the situation. But public opinion polls continue to show they are not happy about government, its policies, actions, and institutions.

The second part of the argument is these groups, by creating enclaves for themselves in which they can pretend they are living off the grid as much as possible, have cut themselves off from what may be the only viable source of creating legitimacy—through practice. A government that is dependent, in any sense, on citizens’ confidence and trust requires active involvement so citizens can develop the necessary political sensibilities, such as belief in something called “the public interest.” According to John Stuart Mill: “It is not sufficiently considered how little there is in most men’s ordinary life to give any largeness either to their conceptions and their sentiments... Giving them something to do for the public supplies, in a measure, all those deficiencies” (1972, 233). He goes on to cite serving on juries and in local government offices, saying these duties “make them very different beings... from those who have done nothing in their lives but drive a quill or sell goods over a counter.” In public participation, the citizen “is called upon... to weigh interests not his own... to apply... principles and maxims which have for their reason of existence the common good...” (Mill 1972, 233).

Tocqueville also argued participation in local civic activity would encourage what he called “self-interest rightly understood” (1990, 112). Through participation, citizens

would “attend to the interests of the public, first by necessity, afterwards by choice” (Tocqueville 1990, 112).

In contrast, the Federalists rejected the notion of direct participation by ordinary citizens because of their rather dim view of human nature as too self-interested and potentially violent to be the basis of governance. For them, a government well run will be the link that maintains the people’s affections and make direct participation unnecessary. Alexander Hamilton made this sentiment clear with his statement in *Federalist Paper No. 68*: “[T]he true test of a good government is its aptitude and tendency to produce a good administration” (1788).

The Antifederalists, on the other hand, argued that setting up a government with so few tangible connections between it and citizens would produce exactly the disaffected, ignorant people the Federalists were so worried about. And so, says Herbert Storing in *What the Antifederalist Were For*, it did.

Thus, the antigovernment groups may, in fact, be a product of our representative system, which assumes that what people want is not participation, but results. Yet the question remains, are results (effectiveness) an adequate source of legitimacy? The antigovernment sentiment seems to suggest that effectiveness (results) is a weak source of legitimacy. Theorists like Mill and Tocqueville understood this, seeing human beings not just as creatures who can be pacified with “services” but beings whose full humanity does not develop unless they have an opportunity to exercise the better parts of their nature by tangible activity that benefits everyone, not just themselves.

Although many citizens, scholars, and government officials pay little attention to individuals involved in the antigovernment movement, these individuals and groups are

worthy of study. It would enhance our understanding of citizen views, in general, and of the legitimacy of government and the administrative state if we took a more searching look at these individuals and groups. These citizens are more passionate and vocal about government than their fellow citizens and they have placed themselves in an isolationist position such that it provides researchers a unique opportunity to see and theorize, concretely, about how citizen participation and interaction with government can affect citizen views on government.

2.2.1 Legitimacy and the Administrative State

As stated at the beginning of this chapter, the starting proposition for this research is the proposition that the common means for legitimizing the administrative state are ineffective when dealing with citizens in the administrative arena—especially those citizens who have become so disillusioned with the administrative state that they have attempted to find refuge in antigovernment movements. In order to pursue this line of research, it is necessary to discuss the most relevant theories that are employed to legitimate the administrative state. Several scholars have explored this issue. Prominent among these is Camilla Stivers, whose scholarship has delineated several pervasive and dominant themes in defense of the administrative state. According to Stivers there are three main arguments for legitimizing administrative power: (1) expertise; (2) virtue or public service and; (3) leadership and vision (Stivers 1993a).

Legitimacy based on expertise has its roots in the work of Woodrow Wilson (1887), Frederick Taylor (1911), and Max Weber (1964). This view generally espouses the idea that the administrative state is legitimate because it provides the professional

expertise necessary for running the government. It is through administrative expertise that government achieves results that are effective, efficient, and economical.

Legitimacy based on virtue or public service is based on the idea that public administrators are stewards of the United States Constitution and act for the public good. This view and variations on this view can be found in the writings of numerous scholars of the administrative state such as John Rohr (1986), Michael Spicer and Larry D. Terry (1993a,b), and Terry L. Cooper (1996).

Finally, legitimacy based on leadership and vision justifies existence of the administrative state on the basis it provides continuity, public guidance, and direction. This is a goal-oriented perspective that champions entrepreneurialism and vision in the name of the public interest. This is the view of Osborne and Gaebler (1992) and proponents of new public management.

How these themes are manifested in the daily work of government, or how they provide legitimacy or illegitimacy to the administrative state, depends, first, on the translation of these themes into action, and second, the interpretation of this action by the citizens. Legitimacy based on expertise is generally expressed to the citizenry through the administrator's ability to find the most efficient and economical solutions to public problems. In addition, the administrator cultivates the image of the neutral professional who works to economize public resources. Those who base legitimacy on virtue or public service view the administrator as one who is working for the public good and is, above all, a steward of the United States Constitution. Furthermore, this virtuous public servant has the morality of the public in mind; perhaps even at odds with what the public themselves believe. Finally, legitimacy based on leadership and vision is often expressed

to the citizen through public administrators’ entrepreneurialism and success in attaining public goals. For these administrators, the fact that the public’s needs and concerns are anticipated and met is the citizens’ proof of the leadership and vision of the administrative state.

The problem is these images and themes are not always expressed to citizens or they are not expressed effectively. Citizens often report feeling a disconnect with government administration and a general distrust of government. A September 2007 poll reported that less than half of Americans, 47 percent, had at least a fair amount of trust in the federal government to handle domestic problems (Jones 2007). The same poll reported Americans had a high level of trust, 70 percent, in the “American people as a whole when it comes to making judgments under our democratic systems about issues facing the country” (Jones 2007). Table I shows that these are the lowest levels since the Watergate era.

**Table I. Historical Trust in the Federal Government
Gallup Polls 1974, 2001–2002, 2007**

	Sep 2001–Sep 2002		
	Apr 1974	high point	Sep 2007
	Percent	Percent	Percent
Handling international problems	73	83	51
Handling domestic problems	51	77	47
The executive branch	40	72	43
The judicial branch	71	75	69
The legislative branch	68	67	50
Men/women in political life	68	60	55
The American people	83	78	70

The “high point” levels shown in table I are generally attributed to the aftereffects of the September 11, 2001 terrorist attack on the World Trade Center and the Pentagon. There are myriad proposed reasons for the current low levels of trust in government, among them are the ongoing war in Iraq and President Bush’s methods for attacking terrorism, including the Patriot Act; the failure of government to deal with natural disasters such as Hurricane Katrina, droughts throughout the southern United States, and wildfires in the western United States; and the government’s seeming inability to deal with an aging infrastructure.

It is interesting to note this distrust in the ability of government to provide services and to administer policies and programs is not a general overall malaise in public sentiment. The fact that the American people still have faith in one another is telling. The poll reported that 70 percent of Americans had trust in the “American people as a whole when it comes to making judgments under our democratic systems about issues facing the country” (Jones 2007). The poll leaves the impression that the ideas of sovereignty and democracy are alive and well; the problem is the way the American people perceive the government is not upholding its end of the bargain.

2.2.2 Citizen Dissatisfaction with Government

Evan Berman (1997) discerned several sources of citizen dissatisfaction and disenfranchisement from government. Berman argues that citizens question their relationship with government and experience a sense of disenfranchisement under the following circumstances: (1) when “citizens believe that local government is using its

power against them or otherwise not helping them; (2) [when] citizens do not feel part of local government, or they feel misunderstood or ignored; and (3) [when] citizens find local government services and policies to be ineffective” (106).

Although Berman views these conditions as applicable to local government, they can also be applied to the citizens’ relationship with the federal government. In fact, the sense of disenfranchisement may be even greater when dealing with the citizens’ relationship with the federal government because they may find themselves confronted with these three criteria and a sense of even greater impotence in trying to get resolution with regards to their concerns at the federal level. There is an added sense that individuals are even more powerless to have an effect on federal government attitudes and policies than they do with the local government because they are that much further removed from the federal government. Added to this cluster of disenfranchisement characteristics is the ongoing issue of the federal government having, or attempting to have, greater authority in social issues such as civil rights, welfare, privacy, and morality, and forcing this on the lower levels of government.

2.2.3 Legitimacy of the Administrative State and Citizen Disenfranchisement

Berman’s factors in citizen’s disillusionment of government can be used to operationalize Stivers’s bases of legitimacy (see table II).

Table II. Bases of Legitimacy Operationalized

Bases of legitimacy	Operationalization
Expertise	Citizens find government services and policies to be ineffective.
Virtue or public service	Citizens believe that government is using its power against them or otherwise not helping them.
Leadership and vision	Citizens do not feel a part of government and feel misunderstood and ignored.

Berman's idea of when citizens find government services and policies to be ineffective can be used as an indicator of whether administrative legitimacy based on expertise is being adequately expressed to citizens. Administrative expertise as a base for legitimacy is manifest to the citizens when the administrator's actions are viewed as efficient and effective. If citizens view administrative actions as ineffective, then an argument for legitimacy based on expertise alone is clearly inadequate to legitimize the administrative state to citizens, because they do not see the expertise in action.

Borrowing Berman's construct of when citizens believe that government is using its power against them or otherwise not helping them can be used as an indicator of whether administrative legitimacy based on virtue or public service is being adequately expressed to the citizens. Virtue or public service as a base for legitimizing the administrative state is shown to citizens by administrators acting for the public good and

in the public interest and not in their own interest. If citizens believe administrators are using their power for their own self-interest and are not helping ordinary citizens, then it would appear virtue and public service are not, by themselves, adequate or effective means for legitimizing the administrative state.

Finally, when the administrative state is legitimated on a base of leadership and vision, the administrator must show the citizen that he is acting *for* the citizen—that he understands their needs and concerns and he has the ability to make certain those needs are met and the concerns are meaningfully addressed. This concept of leadership and vision may be explored using Berman’s idea that some citizens report they do not feel a part of government and feel misrepresented and ignored. If citizens believe they are not a part of government, that they are being misrepresented and ignored, then using leadership and vision as a base for legitimizing the administrative state is not effective.

2.2.4 Legitimacy, Disenfranchisement, and the Antigovernment Sentiment

It is generally believed that political and civic behavior is learned. Hence, no one is born with an antigovernment ideology. It is my argument that individuals involved with the antigovernment movement find themselves disillusioned with the current form of government and with the administrative state because the very notions that administrators and scholars use to legitimize the administrative state are missing in their actual interactions with citizens, as citizens in these movements perceive them.

This dissertation analyzes three antigovernment group case studies—the sovereign citizens, the militia, and the patriot movement—using Berman’s factors of citizen dissatisfaction to interpret the words and actions of the individuals involved in the

groups and to illuminate the individual's beliefs regarding the legitimacy of government and the administrative state. The antigovernment movement was chosen for this research because they are vocal in their dissatisfaction over the current United States government, they are organized, they go to great lengths to document their antigovernment sentiment, and, most important, their very reason for being is their questioning of their relationship with government.

For the antigovernment minority, it is not just the system of governance that is illegitimate, but the institutions of government—the administrative state—as well. In fact, it can be argued the two are all but inseparable. In *Crisis and Legitimacy: The Administrative Process and American Government*, James O. Freedman stated:

The United States...has increasingly become an administrative state. Americans have sought to understand the implications of this fact for the character of American democracy, the nature of American justice, and the quality of American life. These implications have often been troubling—even though the administrative process had deep historical roots, even though its growth has been gradual and evolutionary, and even though that growth has occurred only by deliberate acts of democratic choice. (1978, 6)

Freedman has further stated:

The subject of legitimacy is concerned with popular attitudes toward the exercise of government power. Such attitudes focus upon whether government power is being held and exercised in accordance with a nation's laws, values, traditions, and customs. That the legitimacy of the federal administrative process should still be in question at this late date may be surprising. But institutions of which so much is demanded, no matter how deep their historical roots, can hardly be expected to gain and sustain public acceptance when the very basis of their existence and their legitimacy is so consistently and forcefully challenged. (10)

We may never be able to legitimize our governing institutions in the eyes of all citizens; however, it is a worthy study to attempt to understand the origins of the

antigovernment sentiment. The answer to the question of why citizens question their relationship with government and believe that some of the institutions of government are illegitimate, may tell us more about our government institutions than it does about this group of disaffected citizens. Regardless of the answer, the implications are apparent—public administrators must attempt to bridge the gap between citizens and their government and strive to legitimate the administrative state in a way that citizens find meaningful.

CHAPTER III

RESEARCH METHODOLOGY

The true science and study of man is man. —Pierre Charron

If we are to survive, we must have ideas, vision, and courage. These things are rarely produced by committees. Everything that matters in our intellectual and moral life begins with an individual confronting his own mind and conscience in a room by himself. —Arthur M. Schlesinger, Jr.

That's all very well in practice, but how does it work in theory?
—Anonymous

This research is situated within the normative qualitative tradition of inquiry and will employ an interpretive case analysis. The research undertaken in this study seeks to provide descriptive analysis in order to better understand, and guide future research on, the antigovernment sentiment in the United States and the quest for legitimacy in the administrative state.

In the case of domestic antigovernment movements, the perceptions, ideologies, and value interpretations of individuals intersect to create minority groups that appear to share beliefs, needs, and desires. In effect, these individuals make up groups with particular ideologies, and understanding the antigovernment sentiment of the groups requires, in part, an understanding of their story.

As Janice M. Morse states:

The process of doing qualitative research presents a challenge because procedures for organizing images are ill-defined and rely on processes of inference, insight, logic, and luck, and eventually, with creativity and hard work, the results emerge as a coherent whole. The laboratory of the qualitative researcher is everyday life and cannot be constrained in a test tube, started, stopped, manipulated, or washed down the sink.... There is no doubt that important work is conducted using qualitative inquiry. Science begins with observations, and these observations lay the theoretical foundation and determine the conceptual parameters of the discipline. It is on this foundation that the more clearly defined quantitative methods test and refine a growing body of knowledge (1994, 2).

This is the research tradition this study borrows and builds upon. Because the purpose of the research is to analyze and understand particular patterns of conduct of antigovernment groups, to explore the groups' relationship to government, and to gain a clearer understanding of the values and attitudes on which individual and collective participation in these groups rests, qualitative methods are the most appropriate for this type of inquiry.

The specific method of qualitative inquiry that will be employed is the case study method, with data being collected by means of review of documents, biographies, Web sites, visual records, and historical analysis. As Zonabend (1992) explains the "case study is done by giving special attention to completeness in observation, reconstruction, and analysis of the cases under study. Case study is done in a way that incorporates the views of the 'actors' in the case under study" (54).

Interpretive case study research bounds or defines a situation or phenomena under study and provides a description of that bounded system (Stake 1998). As Bent Flyvberg has written in *Making Social Science Matter* (2001):

Donald Campbell and others have shown that...the case study has its own rigor, different to be sure, but no less strict than the rigor of quantitative methods. The advantage of the case study is that it can “close in” on real-life situations to test views directly in relation to phenomena as they unfold in practice....Geertz says that “The Field” itself is a “powerful disciplinary force: assertive, demanding, and even coercive.” Like any such force, it can be underestimated but it cannot be evaded. (82)

Again, citing Flyvberg,

Hans Eysenck, who originally did not regard the case study as anything other than a method of producing anecdotes, later realized that “sometimes we simply have to keep our eyes open and look carefully at individual cases—not in the hope of proving anything, but rather in the hope of learning something!” (73)

In line with this, the case studies undertaken in this research are an attempt to learn something about the relationship between those individuals involved in the antigovernment movement and their government.

Winston Tellis (1997) points out that the unit of analysis is a critical factor in the case study. According to Tellis, the unit of analysis “is typically a system of action, rather than an individual or a group of individuals. Case studies tend to be selective, focusing on one or two issues that are fundamental to understand the system being examined” (1997). The system of action that is being researched here is the system that espouses an antigovernment sentiment. Specifically, this research looks at three different social movements to gain a greater understanding of the foundations of the beliefs and ideologies of those individuals involved in the domestic antigovernment movements. Those movements are the Sovereign Citizens movement, the Militia movement, and the Patriot movement.

In employing the case study method, the researcher is responsible for the following conceptualizations (Stake 1998, 103):

1. Bounding the case, conceptualizing the object of study;
2. Selecting phenomena, themes, or issues—that is, the research questions—to emphasize;
3. Seeking patterns of data to develop the issues;
4. Triangulating key observations for bases for interpretation;
5. Selecting alternative interpretations to pursue; and
6. Developing assertions or generalizations about the case.

This is the model this research follows. Each of these steps will be explored in further detail.

3.1 Bounding the Case, Conceptualizing the Object of Study

The social movements I have chosen to study—the Sovereign Citizen movement, the Militia movement, and the Patriot movement—are the three main movements in the current antigovernment movement. Because the movements themselves are made up of different groups and organizations, I have chosen to focus on one group as an exemplar of each movement. As representative of the Sovereign Citizens movement, I have selected the Republic of Texas. The Republic of Texas was chosen because it is the most influential and active of the Sovereign Citizen groups. Other groups in the movement generally follow the lead and the methods of the Republic of Texas. The Michigan Militia was chosen to represent the Militia movement for the same reason. The Michigan Militia is one of the oldest of all of the Militia groups and has been extremely influential in dictating the agenda and methods of other militia groups. The Patriot movement is somewhat more complex and more difficult to capture with a single case. Patriot groups are generally national groups with state chapters. Because the state chapters are virtually identical and take their lead from the national group, a fuller description is possible by

looking at the national groups. In this instance I have chosen We the People to represent the Patriot movement.

The source data here is written documents, not interviews. There are two reasons why written documents were chosen to interpret and analyze: (1) it is very nearly impossible to gain direct access to these groups and individuals; and (2) there is a wealth of written documentation from the groups themselves explicating their views and they have gone to great lengths to articulate their position in writing

3.2 Selecting Phenomena, Themes, or Issues—That Is, The Research Questions—To Emphasize

As stated earlier, the research questions here are (1) How do individuals in domestic antigovernment groups perceive their relationship to the government, and specifically, what are their reasons for believing that the current institutions of government are illegitimate? (2) How do the views and actions of individuals involved in domestic antigovernment groups undermine or enhance the arguments for legitimacy of the administrative state, and in turn, constitutional democracy? and (3) What are the implications for the administrative state and for American constitutional democracy?

These research questions were chosen to get at the heart of the antigovernment phenomena *and* the antigovernment movement's relationship with the administrative state.

3.3 Seeking Patterns of Data to Develop the Issues

In conceptualizing the object of study as the antigovernment groups and selecting the phenomena to be emphasize it became clear that an interpretive framework for

analyzing the groups must include both a theoretical underpinning of the common bases for legitimacy of the administrative state and concrete framework for seeing, or not seeing, those theoretical underpinnings in practice.

The common bases for legitimating the administrative state draw on the work of Camilla Stivers, who argues that these common bases of legitimization are as follows: expertise, virtue and public service, and leadership and vision (1993). In order to explore whether these common bases of legitimization are being translated into action so that citizens have an understanding of the derivation of administrative authority and power, I employ Even Berman's conditions whereby citizens question their relationship with government.

Berman draws on theories of human motivation and behavior and argues that citizens question their relationship with government and feel a sense of disenfranchisement when:

(1) citizens believe that...government is using its power against them or otherwise not helping them; (2) citizens do not feel part of...government, or they feel misunderstood or ignored; and (3) citizens find...government services and policies to be ineffective. (1993, 106)

Berman's idea of when citizens find government services and policies to be ineffective can be used as an indicator of whether administrative legitimacy based on expertise is being adequately expressed to citizens. Administrative expertise as a base for legitimacy is manifest to the citizens by the administrator's actions being viewed as efficient and effective. If citizens view administrative actions as ineffective, then an argument for legitimacy based on expertise alone is clearly inadequate to legitimize the administrative state to citizens, because they do not see the expertise in action.

Borrowing Berman's construct of when citizens believe government is using its power against them or otherwise not helping them can be used as an indicator of whether administrative legitimacy based on virtue and public service is being adequately expressed to the citizens. Virtue and public service as a base for legitimizing the administrative state is shown to citizens by administrators acting for the public good and in the public interest and not in their own interest. If citizens believe that administrators are using their power for their own self-interest and are not helping the ordinary citizens, then it would appear that virtue and public service are not, by themselves, adequate means for legitimizing the administrative state.

Finally, when the administrative state is legitimated on a base of leadership and vision, the administrator must show the citizen that he is acting *for* the citizen—that he understands their needs and concerns and he has the ability to make certain that those needs are met and the concerns are meaningfully addressed. This concept of leadership and vision may be explored using Berman's idea that some citizens report that they do not feel a part of government and feel misrepresented and ignored. If citizens believe that they are not a part of government, that they are being misrepresented and ignored, then using leadership and vision as a base for legitimizing the administrative state is not effective.

Through this interpretive framework, patterns of citizens' interpretation of government actions can emerge that can lend insight into how individual's involved in antigovernment movements view their relationship with the government and with the administrative state. At the same time, these patterns give insight into whether administrators are legitimating the administrative state on an adequate bases, at least

where the most difficult to convince citizens are concerned. In other words, what I am looking for is where people's comments either match or contradict the conceptual framework derived from Berman and Stivers. In addition to this, I am looking for ideas that do not fit the framework—meaning, arguments that are totally outside the framework, but that are important to the people involved.

3.4 Triangulating Key Observations and Bases for Interpretation

Within these cases, I use the members of the group's own words to tell their stories. I attempt to be as true as possible to the stories and not to color the story with unnecessary interpretations and bias. The manner that I have chosen to organize each of the cases, however, reveals the data patterns used to develop the issues. I have organized each case around the conditions that are present when citizens question their relationship with government and feel disenfranchised from government. In doing this, I have remained true to letting the individual's own words tell their story, but I have allowed the patterns to emerge in a more coherent and comprehensive manner.

3.5 Selecting Alternative Interpretations to Pursue

Because this research relies on the word and interpretations of the individual's being studies themselves, and the research is situated within a theoretically grounded framework, the interpretive analysis comes down to the question: Does the data fit the framework or is there perhaps an alternative explanation that better fits the data? Because the scope of this research is limited, it does not allow for selecting alternative interpretations to pursue, instead it attempts to open the field to a new line of inquiry.

Where alternative explanations would better fit the data than the framework chosen, it allows for, and in fact requires, future research to attempt to discern what those alternative interpretations may be and to put them to the test. Although, as stated above, the scope of this research does not allow for a full exploration of alternative interpretations, where an alternative interpretation may better fit the data is noted throughout the research. It is hoped that these alternative interpretations will be more fully explored in later research.

3.6 Developing Assertions or Generalizations about the Case(s)

By rigorously following the methods discussed above and by using more than one case, assertions and generalizations can be made about the antigovernment groups. This research is a collective case study (Stake 1998). The individual case studies that make up the collective may or may not have common characteristics, patterns, issues, or ideologies. As Robert Stake states, one uses collective cases “because it is believed that understanding them will lead to better understanding, perhaps better theorizing, about a still larger collection of cases” (1998, 89). That larger collection of cases in this research is the antigovernment movement itself.

Of course, every research methodology has its intrinsic weaknesses. The key weakness in the case study method of analysis is generally thought to be that the data is easily molded to “fit” the researcher’s preconceived notions of what the data should say. By employing the interpretive method of explanation building discussed above this problem is greatly reduced if not eliminated. Interpretive explanation building not only allows for alternative interpretation of data, it encourages it within the method itself.

Through the gradual building of the interpretation other plausible or rival explanations are entertained, thereby obtaining the most persuasive fit for the data.

This dissertation is not so much an attempt to provide answers. It is, instead, an attempt to open the field up to a new line of inquiry and to study a group of citizens who may be uniquely situated to provide insight into the ongoing problem of a commonly accepted base of legitimacy for the administrative state. Because these citizens are some of the most cynical toward government and administration and because they tend to form groups based on these views, they provide an invaluable resource for attempting to understand the origins of antigovernment sentiment and how administrators may be, in fact, fueling the flames for the antigovernment movement. Finally, as Flyvberg has stated, "...a discipline without a large number of thoroughly executed case studies is a discipline without a systematic production of exemplars, and...a discipline without exemplars is an ineffective one" (87).

CHAPTER IV

THE DEBATE SURROUNDING THE LEGITIMACY OF THE ADMINISTRATIVE STATE

I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. —Grover Cleveland

With respect to the two words “general welfare,” I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators. If the words obtained so readily a place in the "Articles of Confederation," and received so little notice in their admission into the present Constitution, and retained for so long a time a silent place in both, the fairest explanation is, that the words, in the alternative of meaning nothing or meaning everything, had the former meaning taken for granted. —James Madison

No man is good enough to govern another man without that other's consent. —Abraham Lincoln

Woodrow Wilson is often credited with founding the profession of public administration in his 1887 essay, “The Study of Public Administration.” In fact, however, public administration is as old as the republic itself. The First Congress of the United States, in 1789, authorized administrative officers to estimate taxes on imports

and to adjudicate claims to military pensions (Freeman 1978). Furthermore, more than one-third of the federal agencies were in existence before 1900 (Freeman 1978).

Therefore, administration has been thoroughly entrenched as an integral part of our governing system since the founding of the country. As Wilson himself stated:

“Administration is the most obvious part of government; it is government in action, it is the executive, the operative, the most visible side of government and it is as old as government itself” (1887, 14).

Despite the historical pedigree of the administrative state, its legitimacy has been continually called into question. Legitimacy in this context does not merely mean legal. Instead the legitimacy that is in question here is “conformity to the broadly accepted principles or rules and customs of a political and social order” (Spicer 1995, 2). As Michael Spicer notes: “In this broader sense it is not at all obvious that Americans generally believe that the administrative state is legitimate” (1995, 2). American’s depend on the idea of elections as a legitimating mechanism for in our system of governance, however, career bureaucrats are both tenured and unelected. This leads to constant questioning of the legitimacy of the administrative state.

The arguments that scholars have put forth to legitimate the administrative state are generally placed into one of three schools of thought: the professionalism or expertise school; the public service or constitutional school; and the leadership and vision school. In addition to these common approaches, this chapter will also discuss legitimacy based on a synthesis approach and an approach that suggests legitimating the administrative state through practice.

4.1 Legitimacy Based on Expertise

The argument for legitimacy based on professionalism and expertise has its roots in the work of Woodrow Wilson and erroneously Max Weber. In his 1887 essay, Wilson did not directly address the issue of the legitimacy of public administration, however throughout the essay he intimated that public administration would be afforded official sanction if it were properly maintained as a science and not merely as a political tool.

Wilson stated:

The field of administration is a field of business. It is removed from the hurry and strife of politics; it at most points stands apart even from the debatable ground of constitutional study. It is a part of political life only as the methods of the counting-house are a part of the life of society....But it is, at the same time, raised very far above the dull level of mere technical detail by the fact that through its greater principles it is directly connected with the lasting maxims of political wisdom, the permanent truths of political progress (1887, 20).

Wilson believed that the administrative state would be legitimated as an efficient, effective science that was necessary to run government. Wilson further argues that administrative power is not worrisome (illegitimate), if only it can be “brought to book” (for example, made accountable) (1887, 22).

Unlike, Wilson, Max Weber’s views on bureaucracy and legitimacy are more complex and have often been misinterpreted. In his seminal work, *The Theory of Social and Economic Organizations* (1964), the eminent theorist of bureaucracy, Weber, described three pure types of legitimate authority. The first type was legitimacy based on rational grounds. This was legitimate authority “resting on the belief in the ‘legality’ of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (legal authority)” (Weber 1964, 328). The second type of legitimate

authority rested on traditional grounds. This authority “rest[ed] on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them (traditional authority)” (Weber 1964, 328). The third and final type of pure legitimate authority was that based on charismatic grounds. This type of legitimate authority “rest[ed] on devotion to the specific and exceptional sanctity, heroism, or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority)” (Weber 1964, 328).

The type of legitimate authority that we are concerned with here is the first—legal authority, based on rational grounds. In describing legal authority with a bureaucratic administrative staff, Weber states that their effectiveness rests on “the following mutually inter-dependent ideas”:

1. That any given legal norm may be established by agreement or by imposition, on grounds of expediency or rational values or both, with a claim to obedience at least on the part of the members of the...group;
2. That every body of law consists essentially in a consistent system of abstract rules which have normally been held intentionally established. Furthermore, administration of law is held to consist in the application of these rules to particular cases; the administrative process in the rational pursuit of the interests which are specified in the order governing the...group within the limits laid down by legal precepts and following principles which are capable of generalized formulation and are approved in the order governing the group, or at least not disproved of;
3. That this thus the typical person in authority occupies an ‘office.’ In the action associated with his status, including the commands he issues to others, he is subject to an impersonal order to which his actions are oriented;
4. That the person who obeys authority does so, as it is usually stated, only in his capacity as a ‘member’ of the...group and what he obeys is the law.
- 5...[M]embers of the...group, in so far as they obey a person in authority, do not owe this obedience to him as an individual, but to the impersonal order (1964, 329–30).

Weber is making a case for a pure form of authority based on a rational legal argument.

Weber further states that in rational legal authority there is a “continuous organization of official functions bound by rules” (1964, 330). There is “a specified sphere of competence” (Weber 1964, 330). Here Weber is talking about a systematic division of labor and the legal authority to carry out functions within this realm.

Furthermore, this legal authority is subject to hierarchy, written technical rules or norms govern action, and for the individual holding the office, this constitutes his career.

According to Weber,

[b]ureaucratic administration means fundamentally the exercise of control on the basis of knowledge. This is a feature which makes it specifically rational. This consists on the one hand of technical knowledge which, by itself, is sufficient to ensure a position of extraordinary power. (1964, 339).

Although this seems to fit with those theorists who legitimize the administrative state based on expertise, there is more to Weber than meets the eye. Weber was describing a *pure* legitimate legal rational authority, not a legitimate legal rational authority that existed or even could exist. Weber, himself, states that none of his “three ideal types” of legitimate authority are to be found in pure form (Weber 1964, 329). Instead of trying to describe legitimate authority as it exists, he is attempting to “conceptual[ize] formulation in the sharpest possible form” (Weber 1964, 329).

Weber, in fact did not believe that pure rational legal authority was possible. Just like his theorizing on the ideal type bureaucracy he believed that although bureaucracy was inevitable, it was not possible as an ideal and, therefore, it was not a desirable condition. He believed that this inevitability of bureaucracy would lead civic society to a loss of humanity and liberty. He stated:

It is horrible to think that the world could one day be filled with nothing but those little cogs, little men clinging to little jobs and striving toward bigger ones—a state of affairs which is to be seen once more, as in the Egyptian records, playing an ever-increasing part in the spirit of our present administrative system and especially of its offspring, the students. This passion for bureaucracy—is enough to drive one to despair (Bendix 1960, quoting Weber, 464).

Nevertheless, Weber was often misconstrued to favor a bureaucracy legitimated by legal rational authority through expertise.

The position of Wilson and the misconstrued position of Weber generally influenced those scholars who espoused the virtues of the scientific management movement (Taylor 1911) and the reinventing government movement (Osborne and Gaebler 1992) in furthering the idea that the administrative state was legitimated by their specialized expertise in the field.

Osborne and Gaebler used the philosophies Peter Drucker, Tom Peters, James Q. Wilson, W. Edwards Deming, and E.S. Savas, among others to champion “entrepreneurial government” (Green 1996). The idea of entrepreneurial government is “using resources in new ways to maximize productivity and effectiveness” (Green 1996, 41). In other words, administrators are encouraged to use their expertise to maximize economy, effectiveness, and efficiency—the old idea in new packaging.

Richard T. Green and Lawrence Hubbell, argue that this is simply a rehashing of Progressive and New Deal Era ideas. As proof they state:

Virtually every history or biography that can be found portrays these eras as preoccupied with making governments more efficient and effective (see Eisenach, 1994; Haber, 1964; Hays, 1975; Karl, 1983; Link, 1954; Noble, 1970; Orloff, 1988; Quandt, 1970; Rohr, 1986; Rosenberg, 1982; Skowronek, 1982; Wiebe, 1962, 1967; Zinn, 1966). Leaders of the Progressive Era, for example, heralded the successes of the “business model” and called for its emulation in government....The public identity

of these eras centered around public spirited professions that espoused scientific-knowledge and technical innovation. Reformers called for more reliance on these experts throughout government (1996, 42).

The idea was, and is, that through administrative expertise, public administrators could find the most efficient and effective methods to implement government programs and policies and thereby legitimate the administrative state through their actions and professionalism.

4.2 Legitimacy Based on Public Service or Virtue and the Constitution

In contrast to administrative legitimacy based on professionalism and expertise, is the school of thought that believes the proper basis for legitimizing the administrative state is the constitution and public service. These scholars generally agree that the by following constitutional principles in the name of public service and acting for the public good, the administrative state can be legitimated in theory. The disagreement within this group is over exactly which constitutional principles legitimate the administrative state.

Scholars such as Norton Long (1952), John Rohr (1986), Samuel Krislov and David Rosenbloom (1981), and the Blackburg perspective (Wamsley and Wolf 1996), have argued, in one manner or another, that the representative character of bureaucracy legitimates the administrative state. In *To Run a Constitution: The Legitimacy of the Administrative State* (1986), John Rohr argued that the administrative state clearly fulfills a vital role and a characteristic in our system of government—that of representativeness—that the Founders of the United States Constitution themselves felt was absolutely necessary for the smooth functioning of a democratic republic. This was

a role however, that the Founders were not entirely successful in integrating into the Constitution. Rohr states,

the administrative state heals a defect in the Constitution. The defect is the inadequate number of representatives the Constitution allots to the first branch of the national legislature....the defect is healed through the mass participation in government that the administrative state brings in its train. (1986, 40)

A second view within the constitutional school of thought is that espoused by scholars such as Charles Wise (1993) and Richard Stillman (1987). These scholars believe that the legitimacy of the administrative state rests upon our constitutional design. They view the legitimacy of public bureaucracies as an issue of values and the tradeoffs among competing values. As Wise states:

Our constitutional design was created to establish a continuing framework for making those value tradeoffs. It requires that tradeoffs be constantly made between popular demands filtered through representative processes, effective executive power, and the protection of civil rights. Public administration, of necessity, is actively engaged in fulfilling its purpose through participating in the making of these tradeoffs (1993, 261).

These scholars rely on a sort of eclectic value-based constitutionalism in legitimating the administrative state.

A final viewpoint within the constitutional school of thought is that of Michael Spicer and Larry D. Terry (1993a). Instead of looking solely to the United States Constitution itself as a basis for legitimacy, Spicer and Terry also look to the logic of constitutions in general. Spicer and Terry argue that public administration may be legitimated in the “logic of a constitution in general that pertains to the checking of power” (1993a, 239). They believe that the logic of a constitution is “about restraining discretionary power,” furthermore, “an active role for public administration may be

justified provided it serves that purpose” (1993, 244). They further state that, “[c]onsistent with the logic of a constitution, however, the exercise of administrative discretion must itself be subject to limits” (1993, 244). The result is that Spicer and Terry argue for the logic of a constitution as a basis for the legitimacy of a constrained discretionary public administration.

Camilla Stivers describes this school of thought as steward or guardian model (1993). Stivers states: “Many defenders of public administration invoke the idea of the guardian, trustee or steward of public values” (81). Stivers quotes Morgan and Kiss’s (1991) summary of the argument:

The stewardship model contends that the public administrator’s highest duty is to protect and nurture the constitutional system of the republic and the constitutional values which the system is meant to realize. The justification for performing this role rests on two considerations that, taken together, seek both to legitimate and limit the exercise of discretionary authority by nonelected career officials. First, administrative agents take an oath to uphold our constitutional order. Second, administrative bodies possess a unique capacity to carry out this oath in a manner that furthers constitutional values (quoted in Stivers 1993b, 81).

Although the specific constitutional themes may be different for different scholars, this school of thought generally brings together the ideas of constitutionalism, public service and virtue to legitimate the administrative.

4.3 Legitimacy Based on Leadership and Vision

In contrast to both the constitutional school of thought and those who base legitimacy on expertise, are the scholars who believe that the administrative state is legitimated through administrators’ leadership and vision. Scholars who use leadership

as a base of legitimacy believe that administrative leadership fills a gap in the American governance system.

Stivers explains this view thusly:

A federal system marked by separation of powers and checks and balances and a politics driven by the conflicting demands of competing interest groups not only keep power from coalescing but also make it difficult to govern. Under such conditions, there is a great need for stability and vision, and for people who can see beyond the contention and roadblocks that plague immediate issues, develop long-range plans, keep things overall on some sort of coherent course, resist the political urge to sacrifice basic capacities for short-term gains, generate new ideas for dealing with persistent social problems—and who have enough authority and power to bring a modicum of order and rationality in to the turbulent arena of government. Structurally, because the career civil service entails continuity, stability, and a broad purview of the overall system, it is the ideal place to look to for this guiding vision (1993, 56–7).

This school of thought requires administrators to understand the needs and concerns of citizens and to use their leadership and vision to make certain that the needs are met and the concerns are adequately addressed.

Scholars who espouse the view that the legitimacy of the administrative state is based on leadership and vision include Philip Selznick (1984), Larry D. Terry (2002), and Robert D. Behn (2001). Although each may have a different take on leadership and administration, these scholars are united by their belief that leadership is a legitimate basis for legitimizing the field.

Finally, it is noteworthy that the leadership and vision base for legitimacy is generally intimated in the new or vogue movements in the practice of public administration. An administrative state legitimated on leadership and vision can be found in Osborne and Gaebler's *Reinventing Government* (1992) and other new public management reforms. The idea behind new public management is that public

administration should focus on achieving results rather than on conforming to procedures. The call of new public management is for the public administration culture to change to be more flexible, innovative, problem solving, entrepreneurial, and enterprising. In order to act within this new paradigm, public administrators must be empowered to go beyond normal procedures and use their leadership and vision to arrive at new solutions to old problems.

4.4 A Synthesis Approach to Legitimacy

Another noteworthy view within the legitimacy of the administrative state debate is that put forth by James O. Freedman in *Crisis and Legitimacy: The Administrative Process and American Government* (1978). Freedman's view does not neatly fit into any one legitimacy school of thought—his is a much more eclectic approach. Freedman views the legitimacy of the administrative state as resting upon four principle sources:

- (1) The legitimacy of the administrative process may be supported by recognition that administrative agencies occupy an indispensable position in the constitutional scheme of government.
- (2) The policies and performance of administrative agencies may further be accepted as legitimate to the extent that the public perceives the administrative process as embodying significant elements of political accountability.
- (3) In addition, the effectiveness of administrative agencies in meeting their statutory responsibilities may enhance their legitimacy by strengthening public support in a nation that always has been impressed by effective performance.
- (4) Finally, the legitimacy of the administrative process may be enhanced by the public's perception that its decision-making procedures are fair. (1978, 11)

Freedman incorporates ideas from the constitutional school of thought, the democratic school, and the expertise school in order to make his case for the legitimacy of the administrative state.

4.5 Legitimacy Based on Practice

The final view of legitimating the administrative state is the most recent and the most radical. This is the view that the administrative state cannot be legitimated in theory—it must be legitimated in practice. The major proponents' of this view are Cheryl Simrell King and Camilla Stivers. In their aptly titled book *Government Is Us: Public Administration in an Anti-Government Era* (1998), King and Stivers argue that in order to legitimate the administrative state in the minds of citizens, public administrators must make a connection with the citizens that they serve in their practice.

Unlike other scholars who theorize about legitimating the administrative state, King and Stivers offer concrete suggestions for how administrators can improve their relationship with citizens and legitimate the profession through action. King and Stivers believe that administrators must do the following:

1. Actively create opportunities for people to come together and deliberate: be the maker and shaper of the space for community participation.
2. Employ skills and techniques not typically associated with administration: facilitation, active listening, deliberation, negotiation, empathy, and creative conflict resolution.
3. Work to be inclusive in these efforts not only with regard to demographics, but also to ensure that all interests get to the table.
4. Give up some control, take some risks, learn from situations, move toward collaborative rather than chain-of-command type relations.
5. Identify the gap between citizen knowledge and technical knowledge and work to bridge or close the gap; help citizens understand technical information; let citizens help administrators understand what their experience has taught them.
6. Provide citizens with access to administrative processes and the work of implementation.

7. Gain support from leadership as well as adequate resources to achieve collaborative or integrative participation.
8. Make needed organizational structure changes to ensure that active citizenship and administration live on after the original implementors leave (1998, 203).

King and Stivers believe that the only effective way to legitimate the administrative state and to repair the relationship between administrators and citizens is to do so through effective and meaningful administrative action.

It is clear from this administrative legitimacy debate that a consensus does not exist within the field of public administration on the source of the legitimacy of the administrative state. A consensus does exist, however, in that all of the aforementioned scholars do believe that legitimacy of the administrative process is an important condition for stabilizing constitutional democracy or any regime for that matter. Perhaps because of the emphasis on the bases of legitimization of the administrative state, scholars in the field have generally not attempted any systematic inquiry into the views of those individuals who publicly and actively refuse to accept the administrative state and the American governing institutions as legitimate. This dissertation is an attempt to begin exploring those views, the underlying causes of those views, and the effects that they have on the stability of the administrative state and on our system of constitutional democracy.

CHAPTER V

THE LAND OF THE FREE AND THE HOME OF THE SOVEREIGN CITIZENS: THE REPUBLIC OF TEXAS

The true foundation of Republican government is the equal right of every citizen in his person and property and in their management. —Thomas Jefferson

Texas will again lift its head and stand among nations. It ought to do so, for no country upon the globe can compare with it in natural advantages.
—Sam Houston

We, the people of the Republic of Texas by the grace and beneficence of Creator God, do ordain and reestablish our nation's lawful position among the sovereign nations of the earth in accordance with common law and the Law of Nations, and by these articles do reestablish the government of the Republic of Texas in this interim mode. This action formally dissolves the military rule that has existed over Texas since 1865. —Preamble, Plans and Powers of the Interim Government of the Republic of Texas 2003

5.1 The Sovereign Citizens Movement

The sovereign citizens movement is generally defined as

a loosely organized collection of groups and individuals who have adopted a right wing anarchist ideology originating in the theories of a group called the Posse Comitatus in the 1970s. Its adherents believe that virtually all existing government in the United States is illegitimate and they seek to 'restore' an idealized, minimalist government that never actually existed...[they] wage war against the government and other forms of authority using 'paper terrorism,' harassment, and intimidation tactics, and occasionally resorting to violence. (ADL 2002)

The Posse Comitatus originated in Oregon and California around 1970. Posse Comitatus, a Latin phrase, means the power or force of the county. Hence, members of the Posse Comitatus believed that the county seat, being closest to the citizens, had supreme authority. The basic Posse rhetoric was that there had been subtle subversion of the United States Constitution by various government institutions.

Although the Posse Comitatus was fading in prominence by the late 1980s, the underlying ideology was reemerging in the form of the sovereign citizens movement. Sovereign citizens claim that there are Fourteenth Amendment Citizens who are subject to the laws and taxes of the federal and state government, and there are sovereign citizens, who are subject only to the common law (ADL 2000). For those in the movement the common law is a system of justice where there are no oppressive laws, taxes, regulations, or court orders. Sovereign citizens do not have to pay taxes, have social security numbers, register their vehicles or apply for driver's licenses, and the only court that has jurisdiction over them is a common law court.

According to the Anti-Defamation League (ADL),

[s]overeign citizens constitute a large and energetic extremist movement. Activity can be found in virtually every state, from pirate radio stations in Florida to secessionist groups in Hawaii. Well over a hundred sovereign citizen Web sites have been identified. (2005)

5.2 The Republic of Texas

One of the more active and influential groups in the sovereign citizens movement is the Republic of Texas¹. The republic claims that the United States government illegally annexed Texas and that the current State of Texas is an illegitimate entity holding the Republic of Texas captive. The Republic of Texas describes itself as, “an

independent nation comprised of Texans” (Republic of Texas 2001a). It is a “constitutional republic” and “a government with very limited national powers” (Republic of Texas 2001a). The republic further states:

The Republic of Texas is governed by its citizens as free and sovereign individuals who elect representative bodies on a national, district, and country level. The current national body is a Provisional Government whose purpose is to coordinate efforts to free Texas from its current occupation and then facilitate the first general election....The Districts and Counties of the Republic maintain infrastructure and administer to the general needs of the citizenry on a day to day basis....The Republic stands for the belief that all people, regardless of any other considerations, are born to be free and to seek their own way towards happiness and self-realization. It reasons that the family is the root of all human institutions and is, therefore, inviolate. It acknowledges that the sole purpose of government is to protect and serve the individual in his or her quest for material and spiritual fulfillment. The function of the Republic, therefore, is to be a means and not an end (2001a)².

In making its case for an independent Republic of Texas, the republic also offers a laundry list of government wrongs. According to the republic, the United States government has corrupted its judicial system and its judges so that it has become a pagan institution (Republic of Texas 2003). The government has illegal treaties and illegitimate agencies to further its own goals (Republic of Texas 2003a). The government has set itself above the people without authority and has “placed itself in a world dominant position and as self-appointed policing authority of the world without lawful authority for doing so” (Republic of Texas 2003a, 23). The government has employed legal fictions to create corporations, which are the government’s own agencies, and used these agencies to exploit resources and people (Republic of Texas 2003a).

Following this line of argument, the republic claims the government has “followed doctrines which are not specifically delegated powers of ...its binding

constitution” (Republic of Texas 2003a, 24). They contend that the government illegally uses implied powers to alter the constitution and to further their own illegitimate goals.

The way the republic chooses to attempt to deal with these wrongs is to secede from the union and set up its own government of sovereign citizens.

Citizenship in the republic is open to anyone “who has been living on the soil in Texas for at least six months” (Republic of Texas 2001a). The republic requires an “affirmative action” by those wishing to become citizens of the Republic of Texas to remove the presumption that they are citizens of the United States. Signing an oath of allegiance to the Republic of Texas and having it witnessed by two other citizens can accomplish this affirmative action.

The republic discusses the legality of its goals upfront for those interested in becoming citizens. According to the republic the question is not whether the Republic of Texas is legal, it is whether it is lawful and right. They state: “Actions and thoughts can be, and have been, outlawed throughout the world. However, something that is lawful and right under the auspice of the natural law and common law can never be wrong” (Republic of Texas 2001a). They claim that they are taking a nonaggressive approach to restoring the “natural order.” They do acknowledge, however, that even in light of this,

the occupational government of the United States may outlaw attempts by the people to reestablish Texas to its rightful place and take aggressive action, as it has in dealing with its citizens and with other sovereign nations. At that point it will be illegal to support or participate in the efforts of independence, however, it will still be lawful and right. (Republic of Texas 2001a)

In making its case for independence, the republic states: “The Republic of Texas has been smeared, slandered and libeled by the mainstream press and media...These honest people have been ‘tainted’ by the media buzz word as ‘anti-government’

terrorists” (Republic of Texas 2003a, 5). They go on to state, “[t]he reality and truth remains that the Republic of Texas is FOR government. It is FOR the government originally established....The people are FOR the restoration of lawful government operation within the bounds set forth by the People’s Constitution” (Republic of Texas 2003a, 5). They make it clear that they are “against [the] incorporated governments which have no lawful authority to exist constitutionally and are committing treason against the constitution on a daily if not hourly basis...” (Republic of Texas 2003a, 6).

The republic preaches its message throughout Texas. They hold frequent town hall type meetings, they will provide guest speakers for any occasion, and they are very active in seeking donations, volunteers, and individuals interested in holding office in the republic government. The Republic of Texas seat of government is located in Overton Texas. There is a president, currently Daniel Miller³, with an executive office staff, a vice president, a secretary of government, a secretary of interior, a secretary of foreign affairs, a secretary of commerce and trade, a foreign ambassador, a treasurer, a secretary of defense, a secretary of judicial affairs, a secretary of the assembly, and an ad-interim legislative council. As for the Republic of Texas defense force, the republic states:

The Republic of Texas Defense Forces are composed of many local volunteers across the nation, each dedicated to the preservation of personal and individual freedoms. Each of these units is made up of dedicated individuals who have taken upon themselves the burden of maintaining vigilance and guarding Texas liberty, and who have associated themselves with like-minded individuals. These units regularly train individually or together with other units in the methods of modern defense. They learn tactics and strategy from ex-military and active-duty personnel. They learn first-aid, logistics, intelligence gathering, survival skills, escape and evasion tactics, as well as the use of many military arms. (Republic of Texas 2001d)

There is no mention within the republic literature or on the Web site of the number of individuals in the defense force or within the republic itself. Extremist watchdog groups generally refer to these forces as an unauthorized militia.

The republic operates its own Internet radio station—"Radio Free Texas" (Radio Free Texas 2003). It also has its own news service—the Texas National Press. In describing the publication, the republic states,

[t]he Texas National Press is a private business established under the venue and jurisdiction of the Republic of Texas. It is dedicated to bringing forth the official voice of the Interim Government of the Republic of Texas. While that is our primary goal, we will also publish articles, news and exposés that are of interest to all Texans. (Texas National Press 2004).

This publication contains articles such as "The Texas Navy," "The State of Texas Criminal Profiling," and "Republic of Texas Makes World News with Grand Opening of its Seat of Government and Capital."

In 1997, The Republic of Texas established "Texian's 1st." Texian's 1st is a private bank for the citizens of the Republic of Texas. It is privately owned and was chartered and registered with the Secretary of Government of the Republic of Texas. The Texian's 1st Web site states:

Texian's 1st IS NOT a state bank nor does it offer any services that could connect to such an illegal system of fiat money services. We do not want to connect to that system. We do not handle or store any \$USD (aka Federal Reserve Bank Notes). This being the case we are NOT in competition with those type services" (Texian's 1st 1997).

Texian's 1st deals entirely in silver bar bullion and gold bullion as currency. The republic lists prices for all of its literature, books, and other items in silver and gold prices.

As the foregoing demonstrates, the republic is intent on setting up its own sovereign nation in its entirety: government, media, monetary systems, and justice systems. Through its Web sites, publications, and public speeches, the republic consistently argues it has been denied its rights and dignities as citizens by an illegitimate government. It claims these essential components of democracy can never be obtained under an illegitimate government such as the United States. The remainder of this chapter will explore this claim using the framework of citizen dissatisfaction—citizens find government services and policies to be ineffective, citizens believe government uses its power against them, citizens do not feel a part of government, and citizens find government services and policies ineffective—to illuminate the sentiments of the republic.

5.2.1 Citizens Believe Government Is Using Its Power against Them or Otherwise Not Helping Them

At a Republic of Texas meeting, Robert Kesterson, a former council member of the Republic of Texas Provisional Government, gave a speech on the nature of freedom. The republic references this speech as “describ[ing] many of the reasons why we are struggling to retain control of our native land, Texas, from our tyrannical captors” (Republic of Texas 2001b). Kesterman begins by stating: “I’m going to talk about freedom. I’ve had a lot of conversations with people who don’t know what freedom is. Since they don’t know what it is, they can’t tell when they lost it. Since they don’t know they’ve lost it, they don’t concern themselves with getting it back” (Republic of Texas 2001b). He then tells his audience, “[f]reedom can be summed up in one simple

phrase—Live your life the way that you choose, so long as you don't infringe on others' right to do the same" (Republic of Texas, 2001a).

Kesterson's speech provides an understanding of the republics' concept of liberty and freedom and its belief that the government uses its power against them; because of the importance of this, a large part of the speech is quoted below.

[P]erhaps the best way to describe what freedom is would be to first examine what it is not.

Imagine a country where the people have no freedom—where a corrupt government controls every aspect of life. How would your life be in a country like that? The government would regulate everything you did.

Consider your career: In such a country, industry would be government-controlled. You'd have to accept whatever the government gave you for wages. You'd probably work long hours for little pay. You'd not be allowed to start your own business unless the government gave you permission. To get that permission, you'd probably have to pay someone to push your papers through. And even if they gave you permission, they'd keep a tight watch over you, with inspections and with demands to see your books, and they'd probably demand you turn over any money you make to the government, leaving you just a little to live on.

Consider your family: You couldn't get married or divorced without the government's permission. You couldn't buy a home, or a car, or land, without the government being involved, and you'd pay them a tribute every step of the way. The government would own all of the land, and you would only be allowed to use it as long as you continued to pay tribute

Consider your children: The government would keep a watch on them to make sure they became members of the party as they grew up. They'd decide whether you were raising your children in the best interests of the state—and if you weren't, they'd take your children away from you and give them to someone else. Your children would be forced to attend government schools. You'd have no choice what subjects they were taught, at least while they are young and impressionable. Even when they reached college, they'd need government permission to attend, and their choices of curriculum would be limited, since every course would need government approval.

Consider your health: If you were to get sick, you wouldn't be able to buy the medicines and treatments you needed without first checking with a government-approved medical facility. The doctors there would only give you government-approved medicines, even if there might be alternatives available that would better suit your condition. If the doctors defied the government and gave you an alternative treatment, they would no longer have permission to operate in the medical facility. If you were sick, and perhaps you had already been sick once before, and knew what medicines you needed, you wouldn't be able to go to the store and buy it—you'd have to check with the government-approved medical facility, and they would decide whether or not you could have the medicine you needed. Even vitamins and herbs would have to be approved before you would be allowed to have them.

Consider your religion: The government would control the churches, and they'd have to tow the government line or be forced to close. If you weren't part of a government-approved religion, you'd be branded a cult or a fanatic, and be shunned by society until you saw the error of your ways. If your religion and your beliefs were too far off from government approval, you would be jailed, or perhaps even killed.

Consider the economy: The government would control the economy. They would control what products could be bought or sold, and you'd have to have the government's permission to sell anything, or even to buy anything. Industries could only invest in government-approved technologies, and development would be stifled. With the government keeping so much of the money from industry and businesses, prices for goods and services used everyday would be high, as the industries struggled to recover their costs. And with the government keeping so much of your wages, you would find it harder and harder to make ends meet. Not only would you and your wife or husband both work, but perhaps even your older children would need to work to support the household.

Consider society in general: People would be tired and stressed from working so hard for so little. The effects on their bodies would cause them to be plagued with many illnesses. The continual stress would cause widespread psychological problems of varying intensity. The effects on the family would cause many homes to break up, leaving many children with only one parent. Children would grow up frustrated and without hope. Without hope, people lose their regard for the beauty and value of life. Many would turn to crime to try and break out of poverty. Many would waste their lives on drugs and alcohol.

For Americans, life in a country like that would be hard to imagine. Or would it? Every single thing I have just described happens everyday in the United States. Don't believe me? Think about it.

Consider your career: In the United States, industry is government controlled. Businesses must get the government's permission in the form of a business license to open their doors to customers. To transact business, they must again seek the government's permission in the form of a sales tax permit. Businesses are subject to inspection for building codes, zoning, health, fire, and a number of other reasons. If the business doesn't meet with government approval, they'll shut it down. The government controls the cash flow of the business by laying numerous taxes, which not only take money away from the business directly, but they also cause the business to spend even more of its profits on keeping books, hiring accountants, hiring lawyers, and other such administrative duties. All of this adds up to lower profits for the business, lower wages to the employees, and higher prices on the goods and services the business produces.

Consider your family: To marry, you must seek the government's permission in the form of a marriage license. To divorce, you must again get the government's permission in the form of a court judgment. To buy a car, a home, or some land, you must obtain government permission in the form of a title. The government retains ownership of the land, the home, and the car, and you must pay them rent to use these items that you think you own. Don't believe me? Try not paying your property taxes one year and see how fast 'your' home is taken away from you and sold to someone who will pay tribute. Drive 'your' car down the street without the governments permission—in the form of drivers license, license plates, inspection stickers, and mandatory insurance—and see whether agents of the government don't stop you and tow 'your' car away and put you in jail or force you to pay another tribute to get your car back.

Consider your children: Children are required to attend government schools, with set curriculums. There are exceptions, of course—you can send your child to a private school, or even teach them at home—but even then, you have to have the government's permission and approval to do so. If the government thinks you aren't raising your children properly, they'll take them away from you and put them in a foster home. Think it doesn't happen? I personally know of a man whose child was taken away from him because he wouldn't let the child go trick-or-treating on Halloween. When the child complained to his schoolteacher, she helped the child contact the authorities, and that child is now in a different home. Sound ridiculous? It is. But it happens all too often. You might think that once a child reaches college, they'll be able to get the education they want. But again, the schools tow the government line in the form of permits,

taxation, and various laws they must comply with or risk being shut down. Teachers risk losing their jobs if they step outside the curriculum laid down for them by the board of directors. You can still get an education, but consider how much broader, and how much less expensive, it would be if it weren't for the hand of big government.

Consider your health: When you are sick, you must go to a doctor who has been government approved in the form of a medical license. That doctor will then decide what medicines and treatments you may have, and will give you permission—in the form of a prescription—to get them and use them. Without the government's permission through the licensed doctor, those same drugs will land you in jail. If there are alternative treatments available that might help you, the doctor dares not tell you about them, for fear of losing his license, and thereby lose his ability to make a living. Even vitamins and herbs must meet government approval or the FDA will shut down the company that makes them.

Consider your religion: The government controls churches through the use of building permits, property taxes, and incorporation. Most churches today are 501-C corporations. That status means that they are exempt from certain taxes. It also means that the government can decide whether or not the doors remain open. If you belong to a religion outside the government-approved sphere, you are labeled as a cultist, a separatist, a fundamentalist, a right-wing fanatic, or some other derogatory label. This causes pressure on you from society in general to go along and conform, stifling your free choice. If the government considers your beliefs a threat, they'll throw you in jail for your thought crimes like 'conspiracy' or 'willful ignorance'.

Consider the economy: The government sets price controls on farm products, and controls the farmers through taxation. The government forces the farmers to choose certain crops to grow, by paying subsidies, or by providing tax breaks for certain crops. The government controls industry in the same way—by providing tax breaks to do certain things, and assessing penalties and fines for doing things the government doesn't approve of. Economic and technological development is stifled by these tactics, leaving the government effectively in control of the economy. The regulations, taxes, and laws all contribute to higher costs to industry, which is then passed on to the consumer in the form of higher prices. The consumer must then take whatever wages the government has allowed him to keep and try to stretch it far enough to get by. Sound exaggerated? You often hear people speak of 'tax freedom day.' That is the day when the average American worker has worked enough that the total of all their wages from the first of the year would pay their tax liability for that year. Depending on which study you believe, that day falls in May or June. That means that for almost half of the year, you worked for the

government and didn't earn a dime for yourself. Every year, Congress decides how much of your wages you'll be able to keep. And that doesn't even consider the 'hidden taxes' in the form of prices passed on to the consumer for goods and services.

Consider society in general: Americas are plagued with stress-related illness. People die everyday from heart attacks, strokes, and cancer. Others suffer with ulcers, migraines, or other stress-induced problems. Some will become so depressed that they take their own life to escape the frustration. In the last several decades, America has witnessed alarming disintegration of the family, a removal of morals, and a decay in the social fabric of what was once the best country in the world. Crime is rampant, drug abuse abounds, and an entire generation is growing up without hope as we speak. (Republic of Texas 2001b)

According to Kesterman, the only way to stop an out-of-control government that uses its power against citizens is to secede from this illegitimate government and to form a new government—the Republic of Texas. He believes that through the republic, liberty and freedom can be restored to Texas. He states, “it’s time we...come back into the light as a nation of free men and women who won’t bow down to the false God of government” (Republic of Texas 2001b).

To this end the republic adopted “Plans and Powers of the Interim Government” on May 24, 2003. In this document, it declares they “intend to guard [their] right to self-determination” (Republic of Texas 2003b). It declares their “adherence to God-Given and inherent human rights...the principles of rejection of totalitarianism and intolerance and protection of [the] natural environment” (Republic of Texas 2003b). Finally, it avows that the Republic of Texas shall remain dedicated to freedom and equality for all people in all walks of life” (Republic of Texas 2003b).

It is clear from the foregoing, the republic believes it is not afforded freedom from unnecessary government intervention into private affairs. In fact, it believes citizens

entire lives are run by the government, and the government uses its power against citizens, not for citizens.

With its view of the United States government established, the republic turns its attention to the justice system. As opposed to simply railing against an illegitimate and oppressive justice system, the republic set out to reform and reframe its justice system with its own version of the common law. Although the state of Texas is governed by the 1876 Constitution of the State of Texas, the Republic of Texas has adopted as its constitution the 1836 Constitution of the Republic of Texas. In a puzzling move, however, the republic amends the 1845 Constitution of the State of Texas. In a document called “The Common Law of Texas as Adopted and Perfected By Political Judgment on August 29, 1994 Amendments to the Constitution of Texas Dated December 29, 1845 as Encompassed by the Adopted Land Plan of The Davis Mountain and Big Bend Historical District Dated August 27, 1994” (Republic of Texas 2001c), the republic sets out its version of the common law.

Article I states:

That the rights, Privileges, and Immunities of the Common and Natural Laws shall not be denied to any Natural Persons or Citizens on account of race, creed, sex, or natural or national origin” (Republic of Texas, 1995). Article III states: “That every County in Texas shall establish and maintain Courts of Common Law Plea based solely upon Natural Law and American Common Law, which juries shall judge the Law as well as the Facts.... (Republic of Texas 1995)

Blacks Law Dictionary defines the common law, as distinguished from statutory law, as

the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from judgments and

decrees of the courts recognizing, affirming, and enforcing such usages and customs” (Black 1990).

Here, the jury generally assesses the facts, while the judge interprets the law. The difference between the republic’s notion of common law, and the generally accepted notion of common law as espoused by Black, is the jury is the sole arbiter of both fact and law.

Another notable difference in the republic’s judicial system is stated in Article IV: “The Judges of the Courts of Common Law Plea shall be commissioned by the counties...no such judge at any time of his appointment may belong to any bar or similar association...” (Republic of Texas 1995). The inference here is that not only is formal legal training unnecessary, it is discouraged.

This is consistent with the republic’s general disregard for licensing in general.

Article IX states:

No Persons...shall be forced or required to get any form of contract or license, or registration or permit to engage in lawful activities. This shall not be construed as to deny the necessity to issue certificates of competency for the use of cars and trucks being used on the public highways by those who claim the Right to Travel, nor any other certificates of competency where there is a direct Common Law need to protect the safety and welfare of the Citizens at Large. (Republic of Texas, 1995)

The republic clarifies their position on effective justice in the “Question and Answer” section of their main Web site:

Citizenship in the Republic of Texas carries with it rights and responsibilities. A citizens’ rights, as recognized under the Common Law, are protected by the Constitution of the Republic of Texas. This means that your fundamental rights to life liberty, and property, are properly protected. You cannot be forced to surrender your rights, your liberty, or your property except as punishment for a crime for which you have been convicted by a lawful Common Law jury. No private person or government official has the right to compel you to perform any act

contrary to your conscious. You are free to conduct your affairs in whatever manner you see fit, so long as you do not infringe on anyone else's rights or property. Statutes that attempt to compel performance in matters of personal choice (for example, whether you want to wear your seat belt or drive a certain speed) are unlawful under the Republic of Texas (Republic of Texas 2001a).

In the Republic of Texas, under its version of the common law, citizens are completely responsible for their own actions and any damages they cause. To clarify this, the republic uses an example of a car accident. "If a citizen drives 90 miles an hour down the road, that is his right. But if that citizen damages another person or their property in so doing, then he is personally liable and responsible to make reparations to the other parties involved" (Republic of Texas 2001a). If there is a dispute about who is at fault in such an accident, then the case goes before the common law court and the jury decides.

The republic's version of justice is not a paternalistic one. It believes in personal responsibility and accountability. The republic states: "The people created the courts to keep the government in line with the constitution, not for the government to keep the people conforming to their own self-serving rules and designs" (Republic of Texas, 2003, 77). "There are no courts of justice left in Texas or the United States" (Republic of Texas 2003a, 76). Furthermore, "military tribunals, admiralty courts, administrative courts are not courts of justice...but are self-serving courts designed to benefit their creator, the illicit government, which has removed true government courts" (Republic of Texas 2003a, 76).

Ultimately, the republic believes there can be no justice where there is an oppressive illegitimate government in power. The protections of substantive and

procedural due process under the law promised in the United States and Texas Constitutions amount to nothing where, as the republic believes, the government and the courts are illegitimate entities whose goal is to deny justice to ordinary citizens.

Another issue where the republic believes it is clear the government is using its power against the citizens is equality. The crux of the equality issue for the republic is the inequality between the citizens and the government. The republic states:

[The] government has ceased protecting the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted; and so far from being a guarantee for their inestimable and inalienable rights, [is] an instrument in the hands of evil rulers for their suppression....The federal Republican constitution of their country, which they have sworn to support, no longer has substantive existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative Republic, composed of sovereign state/nations, substituting a consolidated central military despotism, in which every interest is disregarded but that of the...federal and state governments (Republic of Texas 2003a, 51–2).

Those involved in the Republic of Texas believe that under the rule of the United States government and its agents, they will never experience true equality as citizens.

This sentiment of the current government as illegitimate is reiterated in the “Brief by the Republic of Texas”. It states, “ [the] government has by legal fictions created entities called corporations, which by the government’s own admission, are the governments own agencies...and through the government’s instrumentalities have exploited and stolen the resources of many nations and peoples” (Republic of Texas 2003a, 23). It is the denial of, or the restrictions on, access to the resources of the American people that lie at the heart of government ineffectiveness for the republic.

The republic does have a plan for legitimate equality within its new nation.

The goals of the Republic of Texas are to return to community rule wherein a community of Muslims, or a community of Jews, or a community of any like minded people who are inhabiting the soil, make the laws for that community, within the guidelines of our constitution, guaranteeing certain Supreme Arbiter-given and inherent rights to all people in their communities. (Republic of Texas 2003a, 47).

Although the republic does not acknowledge this fact, what it is basically espousing is the doctrine of “separate but equal” that was touted in *Plessy v. Ferguson* (163 U.S. 573[1896]). In *Plessy*, the United States Supreme Court upheld equal but separate transportation accommodations for blacks and whites. The republic appears to be advocating separate communities of individuals with different religious or ideological beliefs to decide for themselves how to define equality and to make their own rules to ensure the effectiveness of their vision.

In more general terms, the idea of equality in the Republic of Texas is this: “You are free to conduct your affairs in whatever manner you see fit, so long as you do not infringe on anyone else’s rights or property” (Republic of Texas 2001a). All citizens in the republic have the same freedoms, the same rights, and the same status.

5.2.2 Citizens Do Not Feel a Part of Government; They Feel Misunderstood or Ignored

As stated earlier, the republic believes Texas was illegally annexed by the United States. Instead, Texas is, and always has been, a sovereign nation; not, as they claim is the current case, a nation who’s property and citizens are held captive. In a document the republic calls “The Brief by the Republic of Texas: The Republic of Texas v. the United States & the State of Texas,” The republic states the purpose of the brief is

to prove that the lands, jurisdiction, and the People of Texas are not a state of the union of the United States of America. The Republic of Texas is

NOT the STATE OF TEXAS or a member of the UNITED STATES under law, under their laws, under their constitution, under treaty, under common law, under contract/commercial law, under international law or under the law of nations. (Republic of Texas, 2003, 20)⁴

This claim of the republic goes back to when Texas was a territory of Mexico.

Because of this, a brief history of Texas must be included in this exploration.

5.2.3 The Annexation of Texas as Told in the History Books

Texas gained its independence from Mexico in 1835. In September 1896, General Sam Houston was elected president and the citizens voted for annexation to the United States (Calvert and Arnoldo 1990). According to Texas historians Robert A. Calvert and Arnoldo De Leon, “Politically, Texans believed in Republicanism—the national ideology of their native land, which bestowed sovereignty upon the masses (Calvert 1990, 74). In a republican form of government, a constitution directed the duties of government, divided the three branches of government and assured a system of checks and balances, and, above all else, protected the rights of the citizens.

The immediate goal for the republic was to gain recognition from the United States and by foreign powers. Texans had already expressed their desire for annexation; however, President Andrew Jackson was reluctant to begin this process. Jackson feared a hostile northern reaction because the annexation of Texas could be viewed as a nod to southerners and their desire to expand slavery’s domain (Calvert 1990).

Stephen F. Austin, the Texas secretary of state, pushed for annexation. However, he died before it was undertaken. J. Pickney Henderson, his successor, was then charged with the task and proposed that Congress annex Texas by resolution, fearing that a

constitutional annexation requiring a two-thirds majority by the United States Senate would not be approved (Brock 1997).

By April 1837, Texans began to rethink annexation and, instead, started realizing the benefits of independence (Brock 1997). On August 4, 1837, however, President Van Buren formally received the Texas minister and he presented the request that the United States consider the annexation of Texas. When Congress failed to act, the request was withdrawn on October 12, 1838 (Brock 1997). In lieu of annexation, Texas and the United States exchanged ratifications of a Treaty of Limits that marked the boundary between Texas and the United States (Brock 1997).

The issue of Texas's annexation by the United States lay dormant until late 1843. Throughout the remainder of 1843 and early 1844 annexation negotiations were ongoing between Texas and the United States. The final treaty, however, failed to meet the approval of the United States Senate and was rejected on June 8, 1844 (Calvert 1990). Nonetheless, President John Tyler believed a joint resolution for Texas annexation would pass both houses of Congress. In January, the House passed a joint resolution for annexation. A majority of the Senate Committee on Foreign Relations voted against the House version on the ground that the proposed method for annexation was unconstitutional (Brock 1997). The constitutional question was whether Congress had the authority to annex by joint resolution. This question was ultimately decided in the affirmative and the joint resolution passed the Senate on February 27, 1845 (Brock 1997). The resolution passed in the House the next day and was signed by President Tyler on March 1, 1845 (Brock 1997).

All that remained was for the existing government of Texas to consent to annexation. The Texas Congress convened and accepted the United States resolution by a unanimous joint resolution (Brock 1997). On July 4, 1845, a constitutional convention met to draft a constitution for statehood. The task was completed by the end of August, and on October 13, 1845 the voters ratified the statehood constitution (Brock 1997). A joint resolution of Texas statehood was passed by the United States Congress and then signed by President James K. Polk on December 29 to take effect February 1, 1846 (Brock 1997). At that time, James Pickney Henderson became the first governor of Texas (Calvert and Arnoldo 1990).

The history explicated above is generally known and agreed upon, the republic, however, has a different version of Texas history.

5.2.4 The Annexation of Texas as Told by the Republic of Texas

In *The Brief by the Republic of Texas* (Republic of Texas 2003a), the republic lays out its version of history and its reasons for believing the lands of Texas are illegally held by the United States government. The republic explains that “[w]hile referred to as a court case—it is a political question, since no government court or international court has the jurisdiction to rule on the facts or its merits....The court we...appeal to is the court of public opinion” (Republic of Texas 2003a, 3).

The republic agrees that Texas gained its independence from Mexico in 1835. That is about all they agree with. According to the republic, the United States started “making overtures towards Texas for statehood in the United States” in 1838 (Republic of Texas 2003a, 59). In 1845, the United States promised payment of all Texas debts,

which at the time seemed an answer to their troubling debt (Republic of Texas 2003a). The republic agrees Texas was annexed by the United States in 1845 by a joint resolution. However, the “average Texan did not realize the United States had no authority of annexation of the state and did not admit it lawfully to the union” (Republic of Texas 2003a, 59).

The republic reports that shortly after annexation, the Texas legislature, disillusioned with statehood, voted for secession. This prompted the United States army to begin occupying the lands of Texas (Republic of Texas 2003a). There was a military confrontation between Texas and the United States. In response to this and a fear that they would lose Texas, the United States made the Compromise of 1850, tendering an offer to pay for the stolen lands of Texas (Republic of Texas 2003a).

The republic states:

The United States kept interfering with the sovereignty, and rights of the Texian people. The years after the compromise, the Texian people wanted out! Starting in December of 1860, with three separate votes from the elected and the electorate of Texas, the Republic of Texas was once again independent and the Flag of the Republic, the ‘Bonnie Blue’ flew over Texas....Texas was the only southern nation/state to vote in all three methods to assure that the government of Texas wanted secession, the county conventions wanted secession, and the People of Texas wanted out of the United States! These votes have never been rescinded by the Texian people in a free and open election and still stand as the lawful and rightful exit of Texas from the United States. Texas aligned itself with the Confederacy, but reserved the right to exit and did not ratify a permanent confederate constitution. (Republic of Texas 2003a, 60–1)

After the Civil War, the United States decided to reannex Texas as part of the Louisiana Purchase in 1866 (Republic of Texas 2003a). According to the republic, “Texas was under executive orders and war powers of the President of the United States Army” (Republic of Texas 2003a, 63). Texans had a constitution forced upon them by the United States government and a constitution written and adopted by the people of

Texas was virtually ignored by the United States (Republic of Texas 2003a). The republic further states: “The carpetbagging government of the state was too well entrenched and allowed the United States to continue its occupation of Texas, up to the present day” (Republic of Texas 2003a, 63).

The Republic sums up their view of the current situation of Texas:

In nearly all cases and courts in Texas, you are not allowed to bring a Bible into the court, you cannot bring up common law, natural law, organic law, Biblical law, Supreme Arbiter’s law, and you cannot bring up the constitution in courts. This is MARTIAL LAW and admiralty courts, where statutory laws are in violation of the constitution, the People are held criminally for civil violations, codes, rules and regulations are given the same force as law. The carpetbaggers wrote laws virtually guaranteeing the continuation with martial law and the enslavement of Texians (Republic of Texas 2003a, 64).

In furtherance of their belief that Texas is sovereign, the government of the republic advertises land for sale. In fact, they demand citizens be landholders. In an advertisement put out by the republic, they state: “In common law one has to be a landholder to have all of the rights of citizenship, especially the right to elect members of government” (Advertisement of the Republic of Texas 2003). The ad goes on to state:

With the fraud of “real estate and ‘warranty deeds’” perpetrated by...Congress...upon Texas...owning land has become extinct. You only think you own your land when in reality the land is held in “royal (real) estate.” Your temporary occupation of the land is now by “permission” of the “royal estate” and it exacts heavy dues, penalties and rents for your occupying that land. (Advertisement of the Republic of Texas 2003).

This advertisement reiterates the sentiments of former Republic of Texas council member Robert Kesterson, who believes the government owns all the land and the people are allowed to use it only “as long as they pay tribute” (Republic of Texas 2001b).

The republic's argument that not only are individual Texans denied their property rights, but also the entire state is held under marshal law is the crux of their succession argument. They believe the annexation of Texas by the United States was an illegal act by an illegitimate government. Because they claim Texas was, and is, a territory under marshal law, they feel any attempt to address the wrongs they are claiming through the political process would be an exercise in futility. Furthermore, they believe there are no protections of substantive and procedural due process under this illegitimate government that ignores the pleas of Texans and ignores the law as they see it.

5.2.5 Citizens Find Government Services and Policies Ineffective

For the Republic of Texas, the most obvious area where the government has been ineffective in its policies is in the American justice system. Those in the republic movement feel they need not do anymore than point to the government's handling of the case of the Branch Davidians at Waco, Texas, to show the ineffectiveness of the current government.

In 1993, David Koresh and a quasi-religious group that he called the Branch Davidians were encamped in their compound in Waco, Texas. There was an armed standoff between those in the sect and the ATF and FBI. The standoff came to an end when the compound burst into flames killing 17 men, women, and children. The cause of the fire may well have originated inside the compound; however, many citizens blame the federal government for the killings. According the republic, the killings were unequivocally the fault of the federal government, they were unprovoked, and they were indicative of the state of justice in America. The republic laments that in the "United

States system of injustice, no one has ever been held answerable for [the] murders”
(Republic of Texas 2003a, 65).

The republic places so much importance on the events at Waco that it sees that one incident as reason enough to withdraw from the United States.

The events at [Waco]...in April of 1993, by the United States, stands burned, forever, in our memories, our hearts and our souls. The actions of the government against people, children and the church...by the United States and the State of Texas, stands in history, as witness and evidence, against the United States for the evil path and acts it has imposed upon the people of Texas. This one event alone, without any other documentation of any kind, is all the evidence needed for justification of an immediate withdrawal of any people from the United States and its evil ways. (Republic of Texas 2003a, 51)

In keeping with the theme of injustice in America and the ineffectiveness of the justice system and law enforcement, the republic furthers its ideology with the Acordada Project. The Acordada Project is a human rights project “affiliated” with the Republic of Texas. It is named after the Mexican prison that held Stephen F. Austin for taking on the cause of the rights of the people of Texas. The Web site states it is dedicated to “those Republic of Texas citizens who are currently incarcerated as political prisoners and prisoners of conscious [sic]” (Acordada Project 2003).

The Web site lists the Republic of Texas political prisoners and information about each individual. One of the prisoners highlighted is Richard McLaren, former Republic of Texas ambassador.

In July 1996, McLaren held a press conference a block away from the state courthouse in Austin, Texas. McLaren was not present in court, where Texas Attorney General, Dan Morales, was seeking a permanent injunction against the republic to keep them from filing bogus liens. Morales claimed hundreds, if not thousands, of liens were

clogging the state's property records system, including one lien filed against all state property (Tinsley 1996).

McLaren was not in court because he did not recognize the legitimacy of the state proceeding. He stated: "I am not responding to the hearing...I will not obey orders of a state court. I will only obey the orders of (U.S. District Judge) Bunton, and those will have to be on a diplomatic basis" (Tinsley 1996). McLaren went on to say the republic had informed the Federal Bureau of Investigation that it planned to begin printing its own money and it had notified the United Nations that it was a nation held captive by the United States of America.

Less than one year later, McLaren was ensconced in his Fort Davis, Texas mountain "embassy" (as designated by the republic at that time) with two hostages and Republic of Texas armed guards. McLaren took a couple, who lived adjacent to his property, hostage in retaliation for the arrest of two Republic of Texas members. McLaren stated: "We have two prisoners of war. They have two of ours" (Villafranca 1997). He also ordered republic militia members to begin "picking up federal judges, legislators, and IRS agents for immediate deportation" (Villafranca 1997).

A day later, Texas Department of Public Safety officials negotiated a trade with McLaren—the two hostages for one of the Republic of Texas members who had been arrested. McLaren and his armed guards then settled into a standoff against the Texas Rangers and Texas SWAT units. Authorities were more than willing to wait McLaren out—the last thing they wanted or needed was a disaster like Waco on their hands, especially with McLaren supporters showing up by the carloads and scrutinizing the situation.

On the fifth day of the standoff, McLaren's attorney, who had been acting as a go-between for the two factions, sent McLaren a letter urging him to surrender peacefully. The letter stated: "It is essential you pick up the phone and say you are coming out because they've made it clear that they are going to execute the warrants" (Jennings 1997). McLaren responded by sending a letter of his own to authorities and copies of wills for all of those encamped in the embassy. McLaren's letter stated they had decided to stay and "hold the sovereign soil of the Republic" (Herrick 1997). In spite of this bold pledge, however, McLaren and the others at the embassy surrendered the next day.

On November 1, 1997, a jury took 90 minutes to convict Richard McLaren of kidnapping. McLaren acted as his own attorney and tried to impress upon jurors that the state court system was illegitimate and had no jurisdiction over him or other "Texas Nationals" (Parks 1997). McLaren was ultimately sentenced to 99 years in prison.

Although McLaren is serving his sentence in a Texas prison, he is not forgotten by the Republic of Texas. The Acordada Project pays tribute to his heroics:

Out of Honor, respect and admiration the Provisional Government and the People of the Republic of Texas do hereby offer a token of appreciation. The Acordada Award is given to *Richard Lance McLaren* for his dedication and loyalty to the Nation of Texas while being incarcerated in the oppressor's prisons. On this celebration of Texas Independence Day in 2003, and the same day the President has issued a proclamation demanding the safety and release of our political prisoners; You, sir, join the ranks of Texas' most Honored for serving your country while at the mercy of the oppressors, as were Texas heroes, Stephen F. Austin and José Navarro held unjustly in the Acordada Prison in Mexico City. With dedication and loyalty to the ideas of true freedom and independence, such as yours, Texas will be Free again (Acordada Project, Republic of Texas 2003).

The Acordada Project highlights the plight of citizens of the Republic of Texas who fight against an ineffective government and who stand up for the rights of all Texans. In their plea for help for their political prisoners, the Acordada Project states:

Your fellow Texan nationals need your help. Since the reformation of the Republic of Texas...many of our fellow Texans have been harassed, kidnapped, tried in the occupier's courts, imprisoned without jurisdiction and jailed without justice. They have been removed and incarcerated in foreign territory to the Republic of Texas. Our people have been incarcerated in de facto occupational prisons and jails located within the boundaries and jurisdiction of the Republic of Texas. Once in the hand of the occupiers they, in their defense, offered and, many times, demanded the truth about the Republic of Texas within the occupational courts but were refused...Once incarcerated they have been subjected to treatment that should be considered, at best, inhumane. They have been denied the privileges that their status as political prisoners should have afforded them... (Acordada Project 2003).

As seen in the foregoing, the republic does not merely believe the government and its institutions are ineffective; it believes they are illegitimate. This begs the question; can any illegitimate institution ever act in an effective manner?

5.2.6 Evidence and Documentation of the Republic

In making its case for sovereignty, the Republic of Texas uses many of the most revered documents in American history. "The Brief by the Republic of Texas" is bolstered by 256 exhibits. Among the documents cited are the United States Constitution, the Declaration of Independence, the Bill of Rights, the Congressional Globe, United States Public Law 103-150, U.S. Government Report 1954, and the House Rules Manual. Among the Texas documents cited are the Texas Declaration of Independence, 1835 Constitution of the Republic of Texas, 1845 Constitution of the State of Texas, 1876 Constitution of the State of Texas, and the voting record of Texas counties on secession.

The scope and thoroughness of the research by the republic is quite vast. The preface to the exhibits states: "the amount of exhibits appears overwhelming in their

extant and relevance to the case, however in the severity of the issue at hand and the great consequences which may result, it was better to lay out all of the available evidences to [the] court...in the name of Justice” (Republic of Texas 2003a, 139).

The reason the depth and scope of the historical documentation is noted is twofold. The first has to do with who has the right to discern the original intent of the founding fathers. The view of the republic is it is just as capable of interpreting historical documents as scholars and lawyers are. In the preface to the brief they state: “This brief was not written by a lawyer, and the evidences gathered are not gathered by professional researchers, but are the result of many hours of labor, involving hard research of many citizens of the Republic of Texas” (Republic of Texas 2003a, 73).

Not only do the members of the republic believe lawyers are not necessary to interpret legal cases and historical documents, they also believe lawyers are merely agents of the United States government. This view can also be seen in the republic’s insistence that judges in the republic’s Courts of Common Law not be legally trained.

The second reason for noting the depth and scope of the historical evidence used by the republic is even in light of all of this evidence, the republic laments the lack of evidence at their disposal and places the blame for this at the feet of the United States government. According to the republic, “[m]any of the documents of history, have been taken and hidden from the citizens of the Republic of Texas, by the various agents and agencies of the United States government” (Republic of Texas 2003a, 73). Furthermore, it believes documents have “been altered from the originals, clauses left out, or deleted entirely, with the only references of their existence from other documents” (Republic of Texas 2003a, 73).

The republic further laments: “Many Texas documents were removed from the lands of Texas by the United States military between 1866 and 1888. Some of these were burned by [the] United States military at the courthouses in Texas during these years” (Republic of Texas 2003a, 74). In spite of this, the republic believes its reading of history is the correct reading and the court of public opinion will rule in its favor.

5.3 Conclusion

In making its plea to the people of Texas to join its cause, the republic tells the citizens they will be liberated by becoming sovereign citizens. They state:

As Citizens of the Republic of Texas you are free to act as you see fit to provide for your self, your family, and your children. The government of the Republic of Texas will not tell you what kind of medical care you can receive, what your children will learn in school, or how much of your own money you can keep this year. You do not need the government’s permission to start your own business, work, or travel. You are the only person who can make the best choices for your own life, and in the Republic of Texas, those choices are left to you, not dictated by a group of professional politicians thousands of miles away. Becoming a Citizen of the Republic vests you with all the rights and freedoms of Citizenship, as well as placing you under the jurisdiction of the Common Law. You will then experience liberty and freedom, rather than a life filled with oppression, regulation, and governmental red tape (Republic of Texas 2001a).

In other words, the republic is promising not only will it protect the citizens from allowing any other government, including the United States, from messing with Texas, it also promises the Republic of Texas government will not mess with Texans. The republic agents will use their power for Texans, not against Texans, and above all, Texas citizens will not be left out of government decision—Texas citizens are the government in the Republic of Texas.

CHAPTER VI

WITH LIBERTY AND FIREARMS FOR ALL: THE MICHIGAN MILITIA

To disarm the people (is) the best and most effective way to enslave them...

—George Mason

The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure. —Albert Einstein

Because a well-armed citizenry is the best Homeland Security, and can better deter crime, invasion, terrorism, or tyranny... The intention of this Michigan Militia... is to inform, promote and facilitate the development and training of the militia. Everyone is welcome, regardless of race, creed, color, tint, or hue; regardless of your religion (or lack thereof); regardless of your political affiliation (or lack thereof); regardless of anything else: if you are an American, who is capable of bearing arms, or wishes to support someone doing so, then you ARE the militia... — Introduction to MichiganMilitia.com

6.1 The Militia Movement

The original conception of the militia is

a body of armed citizens, with some military training, who may be called to temporary active military service in times of emergency. Militias are generally understood to be a part-time, nonprofessional fighting force, distinguished from regular troops or a standing army. In the United States, the term ‘militia’ has historically been associated with the colonial and state militias that existed since the early days of settlement (Pitcavage 1995)

The militia in America is actually older than the Republic itself. It has existed since the founding of the colonies. Originally the charters and laws of each colony governed the various militia groups. Under the Constitution, control over the militia is divided between the state and federal government. The militia in America has at all times had their membership, duties, and responsibilities spelled out by written law (Pitcavage 1995). Militia units have fought in the offensives against the Native Americans, in the American Revolutionary War, in the War of 1812, and in the Civil War. The National Guard, the organized militia of the states, has fought in World War I, World War II, Korea, Vietnam, and the Gulf Wars.

The United States Constitution, Article I, Section 10, Clause 3, states:

No state shall, without the consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit delay.

The Militia Clause (Article I, Section 8) gives Congress the power: “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions” (Clause 15).

To provide for organizing, arming, and disciplining the Militia, and for governing such part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. (Clause, 16)

The result is Congress is the main governing body with authority over the militia.

An additional constitutional consideration that is often brought into the militia discussion is in the Second Amendment: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be

infringed.” There has been considerable debate on the exact meaning of the phrase “well regulated” and whether it means federally regulated or not. The answer to this can be found by looking to the *Federalist Papers*. In *Federalist 29*, Alexander Hamilton stated: “If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security” (Hamilton 1788). Hence, according to Hamilton “well-regulated” refers to laws passed by Congress.

The militia referred to above is not the militia movement of today. This is a fact acknowledged by virtually all scholars of the modern militia movement. The modern militia movement consists of unregulated and unauthorized armed paramilitary organizations. Although they claim legal standing based upon the United States Constitution and they attempt to co-opt the tradition and history of the regulated militia in America, they are not a part of that tradition. In fact, scholars generally trace the “history” of the modern militia movement to the late 1980s and early 1990s (see for example, Crothers 2002; Kushner 1998; Pitcavage 1995).

The modern militia movement generally believes contemporary government in the United States is illegitimate and is far removed from the true intent of the founding fathers. According to Morris Dees of the Southern Poverty Law Center, these “...are people who are estranged from the political process...[they] see government as the enemy and [they] believe its laws and legal system are used not to help and protect them, but to take away their rights, infringe on their beliefs, and destroy their way of life” (1996, 15). Furthermore, these are individuals “...who respond to what they believe is a higher calling. Rather than obey the laws, they resist them as a matter of principle. Even

to death” (1996, 15). These groups see themselves as patriots “fighting against a tyrannical government” (Halpern and Levin 1996, 9). They attack the infrastructure of the government—the administrative state—and view the bureaucracy as being indifferent to their needs and simply bent on power and control.

It has been a trend in the militia movement to target the institutions of government as their primary focus of aggression. This current trend has roots, at least in part, in the “incident at Ruby Ridge” (Neiwert 1999). The incident at Ruby Ridge involved a standoff between Randy Weaver, a survivalist and member of the Patriot movement with ties to the militia movement, and his family, and the ATF and FBI. Weaver was originally arrested on a firearms violation in 1990 and was released on an unsecured bond to await trial. Instead of appearing in court as ordered in February 1991, Weaver ensconced himself and his family in his cabin in the Ruby Ridge Panhandle in Idaho and refused to leave. Randy Weaver, his wife Vicki, their four children—including a newborn—and a family friend, Kevin Harris, remained isolated and defiant until August 1992. At that point, the U.S. Marshals Service, embarrassed by the media attention the Weaver’s were getting, decided to try and put a stop to the standoff. The plan did not succeed; instead it ended with Randy Weaver’s 13-year-old son and a veteran marshal dead. Thus, the standoff had begun in earnest.

The FBI was called in along with a trained tactical assault team and a full complement of snipers. The next day as Randy Weaver and Kevin Harris went outside with their guns to check on the situation, Harris was hit by a sniper’s bullet. As he and Weaver made a mad dash for the cabin door, being held open by Vicki Weaver, another sniper’s bullet rang out striking Vicki in the head and killing her instantly.

The standoff was several days old when Colonel James “Bo” Gritz showed up at the cabin along with hoards of Weaver supporters—including in that group were a contingent of Portland skinheads and members of the Aryan Nations Church. Gritz had been the most decorated Green Beret in the Vietnam War and was a folk hero for many in the area for his antigovernment views and his dissatisfaction with the way the government handled the situation for those listed as missing in action in the war. Gritz finally persuaded the FBI to let him talk with Weaver and try to end the standoff without more bloodshed. He was successful and the standoff ended with Weaver and Harris surrendering and the remaining children leaving the cabin.

This was, however, not the end of the case for the antigovernment movement. In April of 1993, Weaver and Harris went on trial for the murder of the federal marshal. Noted liberal civil rights attorney Gerry Spence defended Weaver. Spence argued that Weaver was merely attempting to defend himself and his family against overzealous, arrogant law enforcement officials. He succeeded. Weaver was acquitted of all charges, as was Harris.

In the end, the FBI settled a wrongful death suit with Weaver for 3.1 million dollars. The case cost the taxpayers 5.4 million dollars. The Justice Department conducted an exhaustive inquiry into the events. Judge Edward Lodge said the FBI’s actions during the trial, “served to obstruct the administration of justice” (Stern 1996, 39). And, furthermore, “[t]he actions of the government, acting through the FBI, evidence a callous disregard for the rights of the defendants and the interests of justice” (Stern 1996, 39). Numerous congressional hearings were held on the incident at Ruby Ridge. Republicans in charge of the hearings attempted to vilify the FBI and the ATF and

condemned the agencies' actions—going so far as to call the sniper's shot “unconstitutional” (Neiwert 1999, 67). And Randy Weaver became a folk hero and a rallying point for those in the antigovernment movement.

The Weaver case gave the militia movement exactly what it needed—a face and a cause others could understand. It was at this point that militia groups, other antigovernment groups, and groups who had heretofore focused on racial or religious hatred began to find common ground—a hatred for the abusive tyrannical government.

After the Weaver case, the militia movement found another cause to ignite the passions of their members—David Koresh, the Branch Davidians, and the fire at Waco, Texas in 1993. This incident was again used as an example of the institutions of the United States government being used against the very citizens they were intended to serve.

In another shift in direction, the militia movement found itself being vilified like never before after April 19, 1995—the day of the bombing of the Murrah Federal Building in Oklahoma City. It was reported early and often that the man responsible, Timothy McVeigh, was a member of the militia. This has never been proven. The damage to the militia movement, however, was done. Citizens who before needed little encouragement to spout their antigovernment rhetoric, now found in light of images of burning children and fallen heroes, these words did not reach many receptive ears. Consequently, as the 1990s came to a close, the militia movement began to decline. According to the Southern Poverty Law Project's *Intelligence Report*, the number of militia and related groups declined from their peak of over 800 in 1995 to 194 in 2000. (Southern Poverty Law Center 2000).

The militia movement however, is not dead. In fact, it appears it is once again on the rise (Crothers 2003). In the aftermath of the terrorist attacks of September 11, 2001, the failure of the government to bring all those responsible to justice, the resultant restraints on civil liberties, and the veil of secrecy that seems to surround the current administration, people are once again giving voice to their mistrust and fear of the United States government.

In October 2004, the ADL released a report entitled, “The Quiet Retooling of the Militia Movement.” In the report it states: “Ironically, efforts by the U.S. to fight foreign terrorism may have the side effect of spurring increased resentment and growth among extremist groups” (ADL 2004, 1). Furthermore, “[m]uch of what agitates the ‘new’ militia movement is a post-September 11, 2001 fear of conspiracies and government power....militia members tend to view the ‘war on terrorism’ as a war directed at themselves, not foreign terrorists like Osama Bin Laden, and consider anti-terrorism measures such as the ‘Patriot Act’ merely a prelude to mass gun confiscation and martial law” (ADL 2004, 2).

The ADL reports on the recent resurgence of militia activities that have occurred around the country. In the report, it also notes some of the 1990s groups that have survived the longest. One of these groups is the Michigan Militia (ADL 2004, 4). Because of the longevity of the Michigan Militia movement, its influence on other militia groups, and the fact that it is the largest militia group, it will serve as an illustrative case for the purpose of this study.

6.2 The Michigan Militia

The Michigan Militia movement was formed in 1984 by a gun store owning Baptist minister, Norman Olsen and a real estate agent, Ray Southwell (Dees and Corcoran 1996). Morris Dees of the Southern Poverty Law Center describes the origins of the Michigan Militia:

Olsen said Southwell came to him with the idea after he had lost a fight with the public school board over goals 2000 and outcome-based education. Southwell saw the federally approved curriculum as a big-government, big-business ploy to weaken instruction, corrupt the education system, and create little more than robots for the workplace.

“Ray came to me and said we needed to do something—we need to form a militia to defend our rights under the Constitution,” Olsen said.

But...the Michigan Militia was not a single-issue entity.

It wanted to get the federal government out of Michigan. “When you turn over state law to federal law you also turn over the power to enforce that law,” Olsen said. “You give up your sovereignty and get more and more intrusion by the Environmental Protection Agency, the Bureau of Forestry and other government agencies. We are gradually losing our state sovereignty.” (Dees 1996, 86–7)

Dees reports that soon after it was established, the Michigan Militia had a membership of between 6,000 and 7,000 members (Dees 1996).

The current membership is difficult to estimate. In the wake of the Patriot Act, those in the militia movement are more covert in their operations and in their communications. They generally are structured in small cells, so that if a government informant infiltrates one cell, the entire organization isn't at risk. Furthermore, the movement somewhat tempers their views on their Web sites and in public forums, they have chat groups where the discussion is more free and where they share the writings and thought of like minded individuals or groups.

The Michigan Militia is organized by county and then by smaller teams or cells. These smaller teams each have its own training, objectives, goals, and call-names (Michigan Militia 2004b). The teams are affiliated under the county unit. At times, the entire county unit will train together. There is a county coordinator for each county who functions as the communications liaison between teams and other coordinators (Michigan Militia 2004b). The Michigan Militia also has a state coordinator, elected by the county coordinators, who maintains communications within all of the groups and maintains the Michigan Militia Web site—michiganmilitia.com. The most active county groups are the Bay County Free and Independent Militia, Macomb County, Washtenaw County MMCW, and Livingston County (Michigan Militia 2004a). In addition to these, there is the South West Michigan Militia, the Southeastern Michigan Volunteer Militia and the Southern Michigan Regional Militia.

In one of the major recruiting tracts of the Michigan Militia, “In Defense of Liberty II,” the group states the militia is “all able-bodied citizens who are capable of bearing arms; the absolute last line of defense against any threat to the State or County, whether that threat is natural or man made, foreign or domestic” (Michigan Militia 2004b). It goes on to state:

Our motivation is patriotism and a sincere desire to defend the Constitution. Our goal is to encourage all citizens to achieve a high level of preparedness for a wide variety of possible emergencies. We support a Constitutionally limited government and defend the American ideals of Life, Liberty, and the pursuit of Happiness. We are open to all citizens regardless of race, sex, religion, or political affiliation....The militia, as an organization, has no religious theme; is not racial in nature; nor does it advocate terrorism or violence. (Michigan Militia 2004b)

The Michigan Militia addresses the charge of being antigovernment in “In Defense of Liberty II.” It begins by clearly stating it is not antigovernment (Michigan Militia 2004b). It goes on to explain it “fully support the restoration of the constitutionally limited government that was intended for this nation. Besides, “‘We the People’ are the Government” (Michigan Militia 2004b). It states its problems with the government are with the “on-going violations of inalienable rights” (Michigan Militia 2004b). Finally, it claims the reason it is “portrayed as negative is that it suits the purpose of tainting the legitimacy of [their] concerns. This is intentional and politically motivated. No one knows the misleading, deceitful capacity of the media like the Michigan Militia” (Michigan Militia 2004b).

The Southern Michigan Regional Militia’s mission statement reads:

It shall be the sworn duty of this Militia to protect, defend, support, uphold and obey the Constitutions of the State of Michigan and the United States of America. Notice is hereby given that violations of either the State or National Constitution, by any alliance, nation, power, state, organization, agency, office, or individual shall be met with fierce and determined resistance. (Southern Michigan Regional Militia 2004b)

Gaining membership into the Michigan Militia is easy. According to the Southeast Michigan Volunteer Militia you are already a member. Both federal and state law, according to members, clearly states the citizens are the militia (Southeast Michigan Volunteer Militia 2005). The Michigan Militia implores citizens to get involved—this generally means preparedness training. In “A Citizen’s Guide to Individual Basic Readiness” the militia informs citizens of the equipment and skills they need to be a full militia member. Under “Level 1: Basic Readiness”—“the absolute minimum level of preparedness necessary” one must be able to “(1) complete a two-mile hike with all of the

basic equipment within 40 minutes; (2) field strip [a] weapon for cleaning; (3) place 8 out of 10 shots into a 9 inch target at 100 yards” (Michigan Militia 2005). The necessary basic equipment includes a rifle with 100 rounds of ammunition and a copy of the United States Constitution.

As for the legality of its activities, the group claims it has “the inalienable rights of self-defense; to keep and bear arms; freedom of speech; and to peaceably assemble. These cover the majority of militia activities. The Constitution of the United States prohibits government, at any level, from interfering or infringing on these rights” (Michigan Militia 2004b). As stated earlier, the militia uses the U.S. Constitution, Article I, Section 8 to legitimize its existence. It also points to United States Code, Title 10, Section 95, which states (in part):

(a) The militia of the United States consists of all able-bodied males at least 17 years of age....(b) The classes of the militia are: (1) the organized militia, which consists of the National Guard and the naval militia; and (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard...” (Southern Michigan Regional Militia 2004a)

Finally, it cites the Michigan Compiled Laws 32.509, which states the “unorganized militia consists of all other (than those in the National Guard) able-bodied citizens of this State” (Southern Michigan Regional Militia 2004a).

According to Lee Miracle, the coordinator of the Southeastern Michigan Volunteer Militia, not only is the militia legal, but also it is an absolute necessity in today’s political and social climate:

It’s important to realize the militia is about the readiness posture of the citizenry, and that is probably the most important, certainly not the only, but the most important part of any kind of ‘Homeland Security.’ We’re not just about guns and camouflage, but also about everybody—everybody being ready to deal with any threat to their way of life, their freedom. It’s

about being educated, informed, armed, and prepared to help each other in times of crisis (Kaliher 2005).

The Michigan Militia talks a great deal about its desire to secure freedom and liberty for every citizen and its concerns for those concepts with the current government. The remainder of this chapter will look at the views of the Michigan Militia and will discuss these views within the framework of citizens' dissatisfaction with government.

6.2.1 Citizens Believe Government Is Using Its Power against Them or Otherwise Not Helping Them

In an address to Congress in 1995, Norman Olson, one of the founders of the Michigan Militia, gave the movements' opinion of the state of government in America today:

While some say that the right to keep and bear arms is granted to Americans by the Constitution, just the opposite is true. The Federal Government itself is the child of the armed citizen. We the people are the parent of the child we call government. You, Senators, are part of the child that We The People gave life to. The increasing amount of Federal encroachment into our lives indicates the need for the parental corrective action. In short, the Federal government needs a good spanking to make it behave....Simply stated, the growing threat of centralized Federal government is frightening America, hence the emergence of the citizen militia. When government is given back to the people at the lowest level, the citizen militia will return to its natural place, residence within the body of the people. Civil war and revolution can be avoided by reinvesting governing power to the people...In order to resist a rebellious and disobedient government, the citizen militia must not be connected in any way with that government lest the body politic lose its fearful countenance as the only sure threat to a government bent on converting free people into slaves (U.S. Senate 1995).

Although the rhetoric may have been toned down after 10 years, the message is still the same.

As stated earlier, the Michigan Militia no longer directly expresses its opinions on its Web sites or in its public appearances; instead, it endorses speeches and writings by like-minded individuals. One publication it continually references is the *Freedom Daily*. The *Freedom Daily* is a publication by the Future of Freedom Foundation. According to the foundation, its mission “is to advance freedom by providing an uncompromising moral and economic case for individual liberty, free markets, private property, and limited government” (The Future of Freedom Foundation 2005).

In “The Mirage of Administrative Justice,” James Bovard states “the trademark of modern political thinking is faith in discretionary power wielded by benevolent politicians and administrators and in letting government employees treat private citizens as they think best” (Bovard 1999). Bovard further states:

We have far more federal agencies than we used to have, and they are under less restraint than what they used to be. The sheer volume of federal action—of laws, regulations, consent decrees, and memos that have the force of law—makes effective judicial and congressional oversight of federal agencies a near impossibility. The larger government had grown, the less controlled it has become. While in previous eras the citizen worried only about the sheriff and the tax collector, he must now often face the power and authority of the zoners, the wage regulators, the compulsory preservationists, the import-price controllers, the occupational licensers, and a multitude of others. We have a vast administrative state with minimal control over the administrators. Because the courts have shown a casual attitude toward administrative justice, thousands of administrators effectively have arbitrary power over millions of citizens (1999).

Bovard believes the administrative state received an unlimited grant of power over the citizenry with the Supreme Court’s decision in *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Bovard’s interpretation of the case is “the Court awarded sweeping discretion to federal agencies to interpret federal laws as they chose—

and thus, in many cases, to decree the limits of their own power” (Bovard 1999). The implication, according to Bovard, is that as a consequence of the *Chevron* decision and the growth of the administrative state, citizens have no power over the federal government and liberty is an illusory concept. This reading is contrary to that of most legal scholars and administrators. *Chevron* generally stands for the notion that courts should be deferential to agencies statutory interpretation and substitute their own interpretation. While *Chevron* does give administrative agencies more flexibility to define vague legislation, the decision was hardly an unlimited decree of power for agencies.

A more recent and more mainstream voice that the Michigan Militia endorses is that of United States Representative Ron Paul (14th District of Texas). Representative Paul is known for being a leading spokesman for limited constitutional government. On the Web site AntiWar.com, Representative Paul opines on the state of government and liberty in a post-September 11th era. He asks: “Is America becoming a police state?” (Paul 2004). The answer:

We are not yet living in a total police state, but it is fast approaching. The seeds of future tyranny have been sown, and many of our basic protections against government have been undermined. The atmosphere since 2001 has permitted Congress to create whole new departments and agencies that purport to make us safer—always at the expense of our liberty. But security and liberty go hand-in-hand. Members of Congress, like too many Americans, don’t understand that a society with no constraints on its government cannot be secure....We ought to be concerned that we have laid the foundation for tyranny by making the public more docile, more accustomed to government bullying, and more accepting of arbitrary authority—all in the name of security. Our love for liberty above all has been so diminished that we tolerate intrusions into our privacy that would have been abhorred just a few years ago. We tolerate inconveniences and infringements upon our liberties in a manner that reflects poorly on our great national character of rugged individualism. American history, at least in part, is a history of people who don’t like being told what to do.

Yet we are increasingly empowering the federal government and its agents to run our lives. (Paul 2004)

In conclusion, Paul simply states, “I’m afraid of living in a society where a subservient populace surrenders its liberties to an all-powerful government” (Paul 2004).

The one area where the Michigan Militia is not shy about stating its opinions on its Web sites is in the area of gun ownership rights. But even here it quotes others on the issue.

The Constitution of most of our states (and of the United States) assert that all power is inherent in the people; that they may exercise it by themselves; that it is their right and duty to be at all times armed.
—Thomas Jefferson

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.
—United States Constitution, Second Amendment

Every person has a right to keep and bear arms for the defense of himself and the state. —Constitution of the State of Michigan, Article I, Section 6

The Michigan Militia points to these maxims and states, “in direct contradiction to the above laws, the government has made ‘owning our guns and believing what we want’ illegal. The above is clear in both intent and wording; this is not an opinion, it is a fact” (Michigan Militia 2004b).

It further argues,

the militia is not radical, we are very concerned however, that our elected public servants in government are not following the Law as provided in the Constitution. These and other violations of the Bill of Rights are more numerous every day; the constitutionally limited Republic of our forefathers has been stolen and replaced with a representative democracy. Democracy is tyranny by majority; that is a bad thing. (Michigan Militia 2004b)

In general, the Michigan Militia claims the federal government “was intended to perform 18 powers [enumerated in Article I Section 8 of the United States Constitution] and all other powers were to be left to the states and the people” (Mulloy 2004, 100). All other acts of the federal government are an encroachment on citizens’ liberty.

It furthers this argument with the sentiments of James Bovard, an author whose views the Michigan Militia endorses and who believes the administrative state has become so pervasive in the lives of the citizens—and because their actions are almost always sanctioned by the courts—there is no limit to their power or the harm that they can do to citizens. He states: “The federal judiciary has created an overwhelming presumption in the legality of the actions of federal agencies. More and more acts by government officials are approved or sanctioned that once would have been considered outrageous, illegal, or unconstitutional” (Bovard 1999).

Bovard also laments the rising cost of getting due process from the government. He argues that because the government has the “deep-pocket,” ordinary citizens cannot afford to fight the government in court. According to Bovard:

Modern administrative regimes create elaborate facades of due process that merely camouflage the arbitrary power of political appointees. Most federal agencies effectively prohibit a citizen from taking a dispute between himself and the agency to an independent federal judge until he has exhausted his “administrative remedies.” This “exhaustion of administrative remedies” requirement allows a federal agency to hold citizens or companies hostage for years, causing them to incur hundreds of thousands of dollars in legal fees regardless of how dubious the government’s position may be (Bovard 1999).

Bovard quotes Senator John Taylor who wrote in 1822: “There are no rights where there are no remedies, or where the remedies depend upon the will of the aggressor”(Bovard 1999). Bovard concludes, “with the constantly expanding power and prerogatives of

federal agencies, those remedies depend more than ever before on the bureaucratic aggressor” (Bovard 1999).

It is interesting that the Michigan Militia makes the claim the government and its institutions are oppressive in their dealings with citizens and do not use their power to assist in providing equality for all citizens. This is rather ironic because the Michigan Militia movement, and the militia movement in general, has a history of being racist and anti-Semitic (Dees 1996). In the past they have been associated with the neo-Nazi movement and the New World Order ideology (Dees 1996). Furthermore, Michigan Militia members have in the past given credence to *The Turner Diaries* as their Bible. *The Turner Diaries*, by William Pierce, a hero in the movement, is “a fictional story of an Aryan revolt that begins with the bombing of a federal building and ends with the mass annihilation of Jews and blacks” (Dees 1996, 5).

The Michigan Militia began to tone down their racist, anti-Semitic views after Oklahoma City. The negative publicity regarding the movement was hurting both the membership numbers of the movement and their image. According to Lane Crothers, the Michigan Militia movement began to soften its public image and to “emphasize the need to build new political institutions that could deal with the problems that would arise when, as the group predicted would happen, the U.S. government collapsed” (2003, 149).

The “new” Michigan Militia makes a case that they are open to all races, cultures, genders, and religions. Regarding race, they state: “We welcome all races, cultures, and beliefs; we gain nothing from turning anyone away” (Michigan Militia 2004b).

Regarding gender, they claim that women “are some of the most dedicated patriots that

you will ever meet” (Michigan Militia 2004b). As for religion, the movement claims that they are not cultists or religious extremists. Again, they claim:

We cherish free thought, patriotic ideals, and the inalienable right of freedom of and from religion. Our members have a variety of religious and philosophical beliefs. We do not side ourselves with any one particular religion; on the contrary, we welcome everyone’s beliefs, as it tends to stimulate intellectual conversation. (Michigan Militia 2004b)

In making their claims that the United States government and its institutions are oppressive and do not protect equality and citizen rights they point to the Patriot Act.

At various times in U.S. history, the government’s law enforcement branches have used their prosecutorial discretion to target citizens who voice their dissent. The law enforcement targeting of citizens who exercise their First Amendment rights to freedom of speech, freedom of the press, freedom of assembly, and freedom of religion since 9-11 is certainly no exception. (Bill of Rights Defense Committee 2007)

The central claim here is that the government is not only ineffective in its Homeland Security policies, but they are illegitimate as well.

As the foregoing shows, the Michigan Militia believes that there is an abundance of unnecessary government intervention into private affairs. Even in the name of security, the movement finds this an illegitimate act of government. The Michigan Militia believes that the current United State government and its institutions are illegitimate and are using their powers against ordinary citizens.

6.2.2 Citizens Do Not Feel Part of Government; They Feel Misunderstood or Ignored

There are three general areas where the Militia of Michigan feels that the government ignores the needs of the people—property, gun ownership, and the right of

the militia to exist. They believe that the government makes clear that they do care about, or ignore citizens, in their total disregard of the law.

In order to illuminate their views on property they cite Jacob G. Hornberger's article "The Sanctity of Private Property" (Hornberger 1990). Hornberger claims it is merely a myth that the current American economic system is based on the sanctity of private property. He uses the examples of the government's intrusion and usurpation of private property via the income tax and licensing of occupations. He makes a plea for a return to earlier times and limited government. He believes it is an illusion that we are continuing the vision and heritage of our American ancestors; instead we have "resorted to the age old idea that Caesar should be permitted to have ultimate control over these fundamental rights" (Hornberger 1990).

In a second article on the topic, Mr. Hornberger asks the question: "When will private property truly be sanctified...in the U.S" (Hornberger 1991). The answer: "[O]nly when the time comes when people stop believing that they have the right to take away what belongs to someone else. There are fewer more destructive forces than the belief that it is acceptable to covet and steal that which belongs to another as long as it is done through the political process" (Hornberger 1991).

One recent development concerning private property has been a lightning rod for criticism from the Michigan Militia—the Supreme Court's decision in *Kelo v. City of New London, CT* (545 U.S. 469[2005]). In a controversial 5–4 decision the Supreme Court expanded the concept of eminent domain. The court ruled that it is lawful for a government entity to condemn a neighborhood in order to make the land available to private developers for the purpose of building commercial facilities.

In light of this decision, the militia has come out and made their views apparent. The *Freedom of Information* message board run by Rick Haynes, the State Information Office for the Michigan Militia Corps Wolverines, is inundated with messages and articles regarding this decision. One such message by Charlene Fassa, “The American Dream is On Life Support,” states:

Two essential aspects of the American Dream are: home ownership and the freedom to create a business of one’s own and be one’s own boss. Now the American Dream is looking more like a nightmare—thanks to the Supreme Court. Who in America can ever be certain that his or her home or business won’t some day be slated for confiscation by the government? Now, elite developers, in conjunction with bought and paid for city governments across America, have been given the green light by the Supremes to legally annihilate the private property rights of American Citizens. What this amounts to is: OUR government has unconstitutionally yanked power away from the many, and transferred that power to a small elite group. To make matters worse, those elites and their social reengineering scheme are now protected by the very government that’s supposed to be protecting the private property rights of average Americans. (Fassa 2005)

Another message quotes Sher Zieve of MichiganNews.com: “June 23, 2005 saw the end of (the Fifth) Amendment to the US Constitution...This decision undermines the very fabric of the United States of America...[The] clause to which I am referring is: ‘nor shall private property be taken for public use, without just compensation.’ Five individuals have decided that ‘public’ now means ‘private’” (Zieve 2005).

An anonymous author writes:

Folks, this is essentially CENTRAL PLANNING, SOVIET STYLE, commonly called: FORCED COLLECTIVISM. City Councils across America are going to act as central planning agents, for the benefit of elites, in a similar fashion to the central planners of the Soviet Union under Stalin. Forget about the notion that a community should be a reflection of the values, character, and the ideals of the local inhabitants. Now, every community in America will be constructed to REFLECT top-

down, elite master planning, regardless of the will of its citizens.
(Anonymous 2005)

There are dozens of these views by militia members on the site. The above quoted posting are illustrative of the content of the majority of the posts.

The site also endorses an article by Joseph Farah, the author of “This Land is Your Land” (1996). Farah unequivocally states “We do not own our property anymore in America” (Farah 2005). He continues:

Imagine the home you own—the one you scrimped and saved your entire life to purchase, the one you planned on living in for the rest of your life, the one you planned to pass on to your heirs—was taken from you, capriciously by a small group of local officials in conspiracy with wealthy developers who want to level it and build office buildings. You may not have to imagine it. It could happen to you at any time....Your property is not your property....That home you invested so much of your life in—it belongs to the government....That is the message of the black-robed tyrants. Listen well. This is the most basic freedom—upon which all other liberties we hold dear are built. That’s what the founding fathers explained. Freedom of speech? It descends, they say, from the right to property. Your thoughts, your beliefs, your opinions were equated with your personal property and possessions. That’s why you had the right to express them according to you conscious. Notice I said “had.” (Farah 2005)

In addition to the Court’s decision spurring outrage and debate on the Michigan Militia Web sites and chat rooms, it is also being used as a recruiting tool. In one of the more poetic calls to arms, the Minutemen (a group with a headquarters in Michigan and close ties to the Michigan Militia), make a plea to prospective members on the Haynes site. It is the “Minuteman Call”:

Americans, don’t be disenchanting,
For here are your Constitutional rights soundly planted.
Do not refuse your country’s call,
For your refusal may well be its fall.
It is not a simple venture to ask.
Still, it is such a vital task.

Yes, your country demands a great endeavor.
For freedom is only kept with great valor.
The borders of America need guarding,
While this government goes on disregarding.
So, just as Colonials of the past won the land,
Today's Minutemen will take their mighty stand.
So, Americans, say not you will not go,
For knocking at our doorstep is our foe.
(Century21MinuteMan 2005)

Finally, there is a petition to impeach the five Justices who voted to expand eminent domain.

The second area where the Michigan Militia believes that the government is ignoring citizens and is acting illegally is in the area of gun ownership. These complaints revolve around the Second Amendment to the United States Constitution: "A well regulated militia, being necessary the security of a free state, the right of the people to keep and bear arms shall not be infringed." MichiganMilitia.com has a section called "Gun Rights for Beginners," where they state their views.

[W]hen something violates the Supreme Law of the Land, i.e, the Constitution, that something is illegal. The federal, state, and local governments, with their gun control laws, have all violated the Supreme Law of the Land. It doesn't matter whether or not you like guns, the Constitution is the Supreme Law of the Land.... This is the most obvious, simple, common sense truth; denying it is not going to help or make it go away. Criminals, by definition, don't follow the law. Making laws to keep guns out of the criminals' hands is not going to work—criminals don't obey the law....This is the most obvious, simple, common sense truth; denying it is not going to help or make it go away....[U]narmed citizens have not only been victimized by criminals throughout history, they have also been victimized by GOVERNMENTS...Gun Control simply makes it easy for criminals and governments (kind of redundant, isn't it?) to harm decent, law abiding citizens. This is the most obvious, simple, common sense truth; denying it is not going to help or make it go away. (2005)

Again, in making their claim that actions of the government concerning gun control not only ignore the views of citizens, but are, in fact, illegal, state: "In direct

contradiction to the [United States Constitution], the government has made ‘owning our guns and believing what we want’ illegal” (Michigan Militia 2004b). They further state,

the militia is not radical, we are very concerned however, that our elected public servants in government are not following the Law as provided in the Constitution. These and other violations of the Bill of Rights are more numerous every day; the constitutionally limited Republic of our forefathers has been stolen and replaced with a representative democracy. Democracy is tyranny by majority; that is a bad thing. (Michigan Militia 2004b)

Finally, the Michigan Militia believes that citizens are ignored and that the government acts illegally when it denies that right of a citizen militia to exist. The movement firmly believes in the legality of their actions. “[W]e all have the inalienable rights of self-defense; to keep and bear arms; freedom of speech; and to peaceably assemble. These cover the majority of militia activities. The Constitution of the United States prohibits government, at any level, from interfering or infringing on these rights” (Michigan Militia 2004b). They go on to claim that “the Geneva Convention, Hague Protocols, International Law, Laws of Land Warfare, as well as Michigan State Law and Federal Law, all specifically provide for citizen militias, with or without state recognition” (Michigan Militia 2004b).

As for the government’s view of these activities, the Michigan Militia states:

All government officials take an oath of office when they are elected, appointed, hired, or whatever the case may be. Similar to: ‘I will uphold and defend the Constitution...’ You have to ask yourself, are they doing this?...The beauty of the Constitution is that it is designed to PREVENT government officials from imposing their own personal view or agenda upon the rest of us, which is what government officials are doing today. (Michigan Militia 2004b)

The Michigan Militia illuminates their belief that the government and its agents ignore the directives of citizens by pointing to what they deem are illegal activities by the government. These activities include the taking of citizens’ property, denying citizens

the right to bear arms, and denying citizens right to assembly—mainly in the form of citizen militias.

6.2.3 Citizens Find Government Services and Policies Ineffective

The Michigan Militia, like the other antigovernment groups draws a lot of their views on government effectiveness from the incident at Ruby Ridge with Randy Weaver and the tragedy at Waco. They claim that they do not want retribution for these incidents they want “something much more sever—justice” (Michigan Militia 2004b). They state: “We want Bill Clinton, Janet Reno, and every federal agent involved to face the thing that they fear most: a trial by jury. That is it. Simple, fair and straightforward. All we ask is for just a tiny bit of justice” (Michigan Militia 2004b).

The Michigan Militia also has several ties to the April 19, 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. The convicted bomber Timothy McVeigh, a Michigan native, is often portrayed in the media as a member of the Michigan Militia. This portrayal is incorrect. As Mulloy notes,

although neither McVeigh nor (Terry) Nichols (McVeigh’s partner) ever belonged to a militia group, recent research...confirms that the association between the movement and the bombing remains firmly fixed in the mind of the American public because of the decision by the media to use militias as part of the explanation for it. (Mulloy 2004, 5)

A closer connection to the Oklahoma City bombing can be found in the story of Mark Koernke. Koernke was a member of the Michigan Militia at-large—a more radical sect of the Michigan Militia. As the ADL reports:

In September 1994, when police in Fowlerville, Michigan, stopped a vehicle with three camouflage-clad men inside who claimed to be Koernke's bodyguards, it became evident that Koernke's followers could not be ignored. The men had three semiautomatic pistols, an AK-47

assault rifle, two other rifles, hundreds of rounds of ammunition, night vision binoculars and handwritten notes that discussed treating people with "extreme prejudice." Arrested on weapons charges, Koernke's followers became fugitives rather than appear in court. One was caught soon after, but two, Paul Darland and William Gleason, became involved in an even darker episode. Darland and Gleason fled to a farm owned by another Koernke supporter, John Stephenson. According to witnesses, Koernke had urged them to flee and promised them help, but failed to deliver. Darland and Stephenson grew increasingly disenchanted with their leader, but Gleason remained loyal. A tape recorded message that Gleason sent to a friend revealed the depth of his loyalty: "I will not fail Mark. In Mark, I found a person and a soul who is worth 20 of my lives at least." The disagreement turned into murder: Darland and Stephenson, suspecting that Gleason was reporting their dissatisfaction to Koernke, killed Gleason in late 1994. Police found Gleason's body buried in the woods two years later (ADL 2005).

Koernke's problems in connection with the Oklahoma City bombing began when a fax sent to Texas congressman Steve Stockman on April 19, 1995, giving details of the incident at the Murrah Building, was traced to him. Furthermore, there was some evidence that Koernke had some associations with McVeigh and Nichols. He became a suspect in what was the most deadly act of domestic terrorism in the United States.

Sometime later it was learned that the fax had been sent an hour after the explosion and there was no evidence tying Koernke to the activities of those involved in the bombing (ADL 2005). The Michigan Militia movement, however, now had another member who they believed was wrong accused, persecuted by the government, and denied justice.

Koernke's legal problems persisted:

[In] the fall 1997 trial of John Stephenson for the murder of William Gleason, Stephenson's defense subpoenaed Koernke; a Stephenson friend with whom Koernke had an acrimonious history served the subpoena. He claimed that, when he and a partner tried serving Koernke, Koernke hit him with a rifle. As a result, Koernke was arrested in November 1997 on a felony assault charge. When the trial convened in May 1998, Koernke chose to flee rather than defend himself.

Although a fugitive, Koernke hardly remained silent: he continued to broadcast on shortwave radio from a hidden location "in the boondocks." He...urg[ed] followers to ambush lone policemen in order to strip, then tar and feather them.... According to a federal affidavit, Koernke also urged supporters to shoot an assistant United States attorney involved in prosecuting other Michigan militiamen. In July, Koernke was captured....Absconding (fleeing the law) was added to the charges, which led to an unusual circumstance; that fall, it was revealed that the process server may have vowed to lie on the stand, if necessary, to get Koernke convicted. (ADL 2005)

Because of the tainted witness, just one more sign to the movement of the ineffectiveness of government, Koernke was only charged with absconding. He was convicted and sentenced to time served. This was not the end of his association with law enforcement:

Six months later, Koernke got himself into trouble again. He was sitting in his car outside a bank that was being robbed in Dexter, Michigan, his hometown; when he drove away shortly after the robbery, a sheriff 's deputy, who thought Koernke might have robbed the bank, tried to stop his car. Rather than pull over, Koernke led police on a 40-mile chase during which he tried to ram a police car before wrecking his own. He also fought with officers trying to arrest him. The following year, Koernke was convicted of fleeing and eluding police, resisting arrest and assault with a dangerous weapon. In April 2001, he went to jail on a sentence of three to seven and a half years. (ADL 2005)

Koernke continues to write and to support the ideas of the movement while in prison. His followers and fellow Michigan Militia members continue to rally support for him and to claim that Mark Koernke is a political prisoner of war.

This is just one example of a militia member's problems with law enforcement. The Michigan Militia, and generally all militia members, believe that they have to protect themselves because the government, specifically law enforcement, is unable to protect them. Furthermore, they feel that they are unfairly targeted and are denied the protections of the justice system—both substantive and procedural. Because of this they

spend a great deal of time educating their members on the law and, in particular, what law enforcement can and cannot do. They provide information such as the requirements needed for a search warrant, land rights, the provisions of the Patriot Act, and the Provisions of the Privacy Act (Southern Michigan Regional Militia 2005, Michigan Militia 2005). The Michigan Militia movement also ardently urges their members to read the U.S. Constitution and to learn their constitutional rights. They exhort their members to:

Read the Constitution and Declaration of Independence...Read the Constitution, learn the history, read the Federalist Papers, develop an understanding of how the country was intended to be and then look at what has become of freedom in this country. To uphold and defend the Constitution of the United States, you have to understand it. Read the Constitution, learn it, know it, assert it. It is the document that sets the rules that our government must follow. (Michigan Militia 2004a)

As with the Republic of Texas and their argument (or lack of argument) regarding government effectiveness, the Michigan Militia does not spend a great deal of time or energy discussing the effectiveness of government. Instead they devote their energy to the arguments that government and its institutions use their power against citizens and that they ignore citizens and these are not the actions of legitimate governments. Perhaps the reason that the effectiveness argument is lacking in the Militia rhetoric is that an illegitimate government, no matter how effective, is still illegitimate.

6.2.4 Evidence and Documentation of the Michigan Militia

In arguing their case against the government, the Michigan Militia, uses revered political documents from United States history. Among the documents in evidence are the United States Constitution, the Declaration of Independence, the Bill of Rights, and

the Federalist Papers. The state documents include the Michigan State Constitution, Michigan State Firearms Law, and the Michigan Concealed Pistol Law.

The reason behind such documentation is two fold. First, it is the central purpose of the Michigan Militia to return to a limited constitutional republic. In order to argue their cause they return to the founding documents. Second, is the concept of the founders' original intent and who has the authority to discern that original intent. D.J. Mulloy has studied militia groups across the country and has found that members of the movement regard "the lessons of the American founding...as clear, the nations origins uncontentious" (2004, 40). He theorizes that "militia members call for access to, and see themselves as acting upon, the *unmediated* utterances of the founding fathers in the belief that if they are allowed to speak for themselves...their very words will be enough to make the militias' case for them" (Mulloy 2004, 40–1).

Mulloy believes that this "direct communication between past and present is regarded as more accurate, more authentic, and more legitimate. It is a key component of the militia movement's strategy of remembering and reconstructing America's history" (Mulloy 2004, 41). This incorporates the two main goals of the Michigan Militia: a return to a limited constitutional republic, and legitimacy itself.

6.3 Conclusion

In making their case for a constitutionally limited government, the Michigan Militia espouses the ideals of the founders of the Republic and rails against the ineffectiveness, the ignorance, and the illegality of the current government, as they see it. They aim to restore to the nation its legitimate government—one of limited federal

powers. They claim the right to undertake this goal under the United States Constitution. Their claim to legitimacy arises from the very document that they are defending.

The intent of the framers of the Constitution was that the militia was to be the primary defensive force for this nation. They wanted normal, everyday average citizens to be the foundation of the militia. In the Federalist Papers, they explained that by arming the whole of the citizenry, the militia would constitute a force superior to any that could be raised by either an enemy or a domestic tyrant. The modern militia consists of responsible concerned patriotic individuals. We do not consider ourselves or our beliefs out of date; being concerned with protecting your inalienable individual rights is not out of date; standing up for freedom of speech is not out of date; standing for what the Founding Fathers fought and died for: Life, Liberty and the pursuit of happiness is not out of date; the need to reduce the interference and cost of government is not out of date. Despite the passing of over 200 years, the truth still holds; the price of Freedom is eternal vigilance. (Michigan Militia 2004b)

The Michigan Militia vows that they are prepared to stand vigilant to uphold the values that they believe that America was founded upon—individual rights, the sovereignty of the people, and justice and equality—and are being eroded by the current American system of governance.

CHAPTER VII

GIVE ME LIBERTY, GIVE ME A CONSTITUTIONAL REPUBLIC: THE PATRIOT MOVEMENT

In the beginning of a change, the Patriot is a scarce man, Brave, Hated, and Scorned. When his cause succeeds however, the timid join him, for then it costs nothing to be a Patriot. —Mark Twain

...the art of government consists in taking as much money as possible from one class of citizen to give to the other. —Voltaire

Government is the enemy of freedom. Unrestrained government is not the benefactor of the people. Unrestrained government ends freedom.
—We the People

7.1 The Patriot Movement

In his book, *In God's Country: The Patriot Movement and the Pacific Northwest*,

David A. Neiwert (1999) defines the patriot movement as an

American political ideology based on an ultranationalistic and selective populism which seeks to return the nation to its constitutional roots....The movement is expressly antagonistic to democracy, promoting a political agenda that would end most institutions and constitutional protections. (4)

The movement views the institutions of government as promoting social injustice.

The patriot movement in America is generally believed to have its roots in the United States farm crisis of the 1980s. During the early 1970s, the American family farm was facing difficulties due to market influences, earlier U.S. import and export policies, and the pressures on farmers to modernize their farms. In the face of all of these factors, a large number of farmers applied for loans to update their farm's technology (Gallaher 2003). The crisis for the farmers began in 1979 when the chairman of the Federal Reserve Board, Paul Volker, began increasing interest rates in an effort to curb inflation (Gallaher 2003). This was the beginning of the end for the American family farm. As the farmers in the rural towns in the Midwest and the Pacific Northwest began to suffer economically, that suffering filtered down to the businesses in the town that had depended upon the farmers and their families for their welfare as well. Eventually this rural enclave of the country began to resent and blame the government for their plight and for their lack of aid during their time of need.

As Carolyn Gallaher, points out in her study of the Kentucky Patriot movement, *On the Fault Line: Race, Class, and the American Patriot Movement* (2003), the rural farmer's disillusionment with the federal government left them open for mobilization into the antigovernment groups. The group that had the earliest influence, and the strongest, on those in the farming communities was the Posse Comitatus. Individuals in these communities were particularly open to the rhetoric of the Posse. "Farmers felt abandoned by a government that had cajoled them into mechanizing and expanding, and even warned them to 'get big or get out,' yet stood by and watched as expansion backfired" (Gallaher 2003, 82). The Posse explained to the farmers that the foreclosures were illegitimate acts by an illegitimate government. Since the only legitimate unit of power

was the county seat and the only legitimate courts were common law courts, the foreclosures amounted to illegal takings. They taught farmers how to set up their own common law courts. As Gallaher explains,

[i]n common law courts dotting the rural landscapes, local bankers, judges, and deputies were given death sentences for creating or assisting in the administration of ‘treason’ against the Constitution. While these rulings carried no judicial weight, they intimidated those charged and required them to act with extreme caution. (Gallaher 2003, 84)

The Posse Comitatus may have been dying out in the late 1980s but the rural farming movement was growing in its own direction into the patriot movement and was expanding beyond the farm belt, both in membership and in content. The patriot movement moved beyond the farm crisis as a focal point and increasingly went after the very structure of government. Whether a particular group was a common law group, an antitax group, or a religious sanctity of life group, all were advocating a return to the founders’ conception of the appropriate constitutional scheme for the United States—a constitutional republic. After the bombing of the Federal Building in Oklahoma City, however, the movement split into two segments. There is an aboveground segment and an underground segment.

The underground segment of the patriot movement generally has more members who are also motivated by racial and religious hatred and who are more violent. They are more secretive and it is much more difficult to gain access to the individuals and their views and ideologies. For these reasons those groups that are more out in the open and aboveground will be the focus here.

The aboveground segment of the patriot movement is generally taking their cause directly to the American people via satellite radio broadcasts, television broadcasts, the

Internet, various publications, and even by beginning to engage in the political process.

These groups include:

The Constitution Party. The Constitution Party is both a national and a state party. They generally believe that the United States Constitution established a Republic rather than a democracy and they are attempting to return the country to that system. They believe in the sanctity of life, government power residing with the states, the restoration of the militias, and the abolition of the separation of church and state. (Constitution Party 2005)

The Constitution Society. The Constitution Society is a clearinghouse of information for militia, patriot, and sovereign citizen groups. (Constitution Society 2005)

Citizens for Better Government. The goal of this group is to promote honesty in government, expose corruption, and to teach individuals means of remedy and recourse when faced with government abuse. (Citizens for Better Government 2005)

The American Founding Fathers Partners. The American Founding Fathers is a pseudo political party that is attempting to abolish the party system in American governance and restore a Constitutional Republic. (American Founding Fathers 2005)

Citizens for a Constitutional Republic. Citizens for a Constitutional Republic is an anti-big-government, anti-democracy organization dedicated to restoring the country to a Constitutional Republic. (Citizens for a Constitutional Republic 2005)

These are just few of the more mainstream patriot groups that are active today. Most groups tend to be national with state chapters. The one thing that all of the groups have in common is a reliance on their interpretation of the Constitution to set their agenda, and their intent to rescue the United States big government and restore a government of the people. This chapter will focus on one particular patriot group that is illustrative of the current movement: We the People.

7.2 We the People

We the People is a dual-purpose organization. There is an educational arm of the organization that does not engage in political activities and there is a membership organization that does engage in political activities. There are also various state chapters.

We the People describe themselves as

a non-partisan, pro-Constitution, network of patriotic citizens who love our country, and are dedicated to America's founding principles of faith in God, limited government, equal justice, due process of law, and respect for personal freedom and private property. (We the People 2005c)

We the People, founded in 1999, states that they “have been leading the fight to restore our Constitution and Bill of Rights, and bring our government back under the control of the People, where it belongs” (We the People 2005c).

The membership of We the People is difficult to determine, however, by the number of people involved in their activities it would not be unreasonable to estimate membership in the hundreds. As for the membership, We the People state:

[We] come from all walks of life, our numbers are growing daily. We are truck drivers and active duty military personnel, we are welders and carpenters, doctors and attorneys, judges and police officers, CPAs and ex-IRS agents, schoolteachers and religious leaders. We are from every ethnic background, faith tradition, color and creed. Simply stated—we are Americans. (We the People 2005c)

The mission statement of the We the People organization is:

1. To protect, preserve and enhance the unalienable rights, liberties and freedoms of the people.
2. To teach people that under our system of governance all power comes from the people and all government is limited by the constitution.
3. To help people become better informed about the history and meaning of every provision of the Declaration of Independence and their State and federal constitutions.
4. To help people become better informed about what is really going on in government.

5. To help people become better informed about how to confront unconstitutional and illegal behavior by those wielding power in government at all levels.
6. To institutionalize vigilance by the ordinary, nonaligned citizen-voter-taxpayer. (We the People 2005a)

The We the People organization states that they are established for the purpose of

developing the public forum, from the ordinary, non-aligned citizenry, a constituency committed to what Mahatma Gandhi and Martin Luther King, Jr. referred to as a militant, non-violent, mass-movement with the goal of achieving substantial reforms in the structure and process of government. (We the People 2005a)

They further state that they will by

rational, intelligent and professional means make it difficult for those currently wielding political and governmental power to continue in power with a business as usual approach....the acknowledgement of popular sovereignty as a social and political force is a fundamental need...[we are] committed to achieving its purposes by all possible means short of violence. (We the People 2005a)

They then go on to list the changes that they deem necessary:

...the clarification of the federal power to tax; the teaching in our schools of the history, meaning, effect and significance of every provision of our founding documents; increased accountability, ethics and efficiency; the clarification and strengthening of public-debt-limiting restrictions; the clarification and strengthening of the prohibitions regarding the giving of public funds for private purposes; legislative reform including the strengthening of representative democracy and participatory democracy; a reduction in and control over the cost and secrecy of the legislatures; easier access to the ballot for independents and party insurgents; weakening of the power of political parties and of government in general; weakening of the desire of special interests to influence legislative bodies; non-partisan elections; a judiciary that is more independent and accountable; and, laws which do not favor public education over private education. (We the People 2005a)

The group currently has a number of projects that they are working on. The “Legality of Income Tax” project is intended to expose the government’s fraudulent and

illegal income tax system (We the People 2005b). The “Citizens’ Constitutional Investigatory Commission” investigates unconstitutional actions by the federal government (We the People 2005b). “Operation Enduring Patriotism,” is a program dedicated to require all schools to teach the history, meaning, effect, and significance of every provision of the Declaration of Independence, the federal constitution and the state constitutions (We the People 2005b). “Coalition Building” is an attempt to bring together various patriot groups concerned about the loss of freedoms and the erosion of liberties (We the People 2005b). “Organizational Development” is directed internally to paying more attention to the way that We the People go about their mission (We the People 2005b). Finally, We the People is involved in various lawsuits (We the People 2005b). These projects and sentiments of We the People will be further detailed and the group will be examined using the framework of citizen dissatisfaction to illuminate their views.

7.2.1 Citizens Believe Government Is Using Its Power against Them or Otherwise Not Helping Them

We the People’s ultimate grievance against the government is the notion that the government abuses the power given to them by the American people. The Chairman of We the People, Bob Schultz, has a regularly scheduled television program called “The Liberty Hour.” In the program, Schultz espouses the views held by We the People. He has stated that the “government no longer honors the Constitution...An arrogant, out-of-control and unaccountable government that has no respect for the precious liberties of every American citizen is destroying our sacred Bill of Rights—our Rights, Liberties and Freedoms” (We the People 2005c). Schultz goes on to state:

The People, endowed by their Creator with certain unalienable rights, have reached a crossroad. We will either act together to focus our spiritual and

earthy energies toward solving this problem or we will languish in ambivalence and indecision until our Republic, our Constitution, our way of life and eventually our freedom are gone. (We the People 2005c)

Like most patriot groups, We the People believe the United States is big government that takes away the rights of the states and the citizens. They believe that the United States Constitution is a “strongly worded set of principles to govern the government, not the people. America is the only nation on earth where the People’s unalienable Rights are recognized in their Constitution, the People are sovereign and the government is a servant government” (We the People 2005c).

In making their case against the government We the People state:

We, the People, have the right and the power to establish limits to the authority of government. When government takes one step beyond those limits, it takes possession of a boundless field of power, no longer capable of definition. There is a word for rulers who believe they are unrestrained by law or constitutions—for those usurpers of popular sovereignty. That word is “Tyrant.” There is a word for a system of government in which the rulers have unlimited power. That word is “Despotism.” In the interest of protecting, enhancing and preserving individual liberty and freedom, the People must pay attention to what government is doing...when the government steps outside the boundaries the People have drawn around its power by the written Constitutions, infringing on one or more of our inalienable rights. Make no mistake about this. Government is the enemy of freedom. Unrestrained government is not the benefactor of the people. Unrestrained government ends freedom. (We the People 2005c)

We the People turn to the America’s founders and to a higher power to justify their beliefs. “America’s founders clearly understood and accepted God’s design and purpose for civil government, and were willing to sacrifice their lives, their fortunes, and their sacred honor—everything they had—to be free” (We the People 2005c). They further avow that the founders “established a Constitutional Republic that recognized the People’s unalienable right to live their lives, their liberty and their property, with minimal

government interference. Thus, America was conceived as a magnificent experiment in freedom that was unique in the annals of human history” (We the People 2005c). They continue,

while the journey was tumultuous at times, the freedom won by our forefathers was ultimately extended to all citizens regardless of race, color, religion or national origin—a testament to who we are as Americans, as what we truly stand for, as “One Nation, Under God.” (We the People 2005c)

Their more concrete concerns regarding government power involve the issues of gun control and the federal income tax. Regarding gun control, We the People hold the same views as those in the militia movement. They believe that if the American people are disarmed they cannot protect themselves from a tyrannical government. We the People point to the 2003 Ninth Circuit Court of Appeals decision in *Silveira v. Lockyer* (540 U.S. 1046[2003]). This case originated as an action against the state of California in 2000. The suit argued for the individual right of the people to keep and bear arms under the Second and Fourteenth Amendments. The case sought to overturn California’s ban on semiautomatic rifles. The State prevailed at trial and the decision was appealed to the Ninth Circuit. The Ninth Circuit held, in effect, that the Second Amendment Right to Keep and Bear Arms is not an unalienable right that belongs to individuals, but rather that belongs to the state. Hence, it is a privilege to be granted or taken from the individual by the government.

To We the People, this is another example of unnecessary and illegitimate government infringement on personal rights and an abuse of government power. In their view the people hold all rights and it is the government that acts at the privilege of the people. To suggest otherwise is to suggest that government abuses of power and

government infringement upon liberty is legitimate. We the People clearly do not believe that this is the case.

The federal income tax is the second concrete issue We the People point to as proof of the government's ever increasing usurpation of individual liberty. On July 2, 1999, We the People launched their Legality-of-Income-Tax project “to get the federal government to respond to a petition of redress of grievances related to the allegedly fraudulent and illegal income tax system” (We the People 2005b). Quoting Bob Schultz extensively:

After years of exhaustive legal research and public hearings in Washington, DC, We the People...has irrefutably proven that our personal income tax system in America is fraudulent in its origin, and illegal in every aspect of its operation. It is immoral, unjust and dishonest. It is not required to fund the lawful, constitutional functions of our government. Our elected leaders are well aware that they have other, constitutional means, such as excise taxes, corporate taxes, tariffs, imposts and duties, to raise sufficient revenue for the legitimate operations of government.

So why do our government leaders allow this fraud to continue against the working people of America? Simply stated, it is nothing more than greed and the desire for absolute political power and authority over the People. Let's be clear, the fruits of our labor do not belong to Caesar, and we are not commanded by our Creator to kneel before false idols or submit to civil government that is immoral, coercive and unjust. The personal income tax system in America undermines everything that we stand for as a free people.

For the past three years, We the People [have] been fighting to abolish this illegal direct tax on the labor of working Americans...We must never forget that, in America, like no other country in history, the People, not the government, are sovereign. Our right to life, liberty and property are unalienable rights—natural rights—God-given rights—our rights do not come from government or man.

It is the generous spirit of the American People, our abiding faith in God, our sense of community, our love of personal freedom, and our respect for our divinely inspired Constitution and Bill of Rights that set us apart from every other nation in the world. No other country on the face of earth has a written constitution that expressly limits the powers of its government,

and a Bill of Rights that guarantees the People's freedom. (We the People 2005b)

The ultimate point for We the People is their right to withhold taxes as a means of ensuring their grievances are addressed. We the People state that the right of redress of grievances before taxes is deeply embedded in American law. "The founding fathers could hardly have used words more clear when they declared 'the people...may retain [their money] until their grievances are [remedied]'" (We the People 2005b, citation omitted). We the People argue:

By these words, the founding fathers fully recognized and clearly stated: that the Right of Redress of Grievances includes the right of Redress Before payment of Taxes, that this Right of Redress Before Taxes lies in the hands of their People, that this Right is the People's non-violent, peaceful means to procuring a remedy to their grievances without having to depend on—or place their trust in—the government's willingness to respond to the People's petitions and without having to resort to violence. (We the People 2005b)

The major grievances of We the People include the claims: The government has engaged in an unconstitutional war in Iraq; the United States Patriot Act violates and seizes a number of the unalienable rights of the people; the government has relinquished control of the nation's monetary system and placed it in the hands of privately owned interests and foreign interests; and the government continues the fraudulent and illegal operation of the federal income tax system (We the People 2005b).

According to We the People, the right to redress of grievances is the very essence of liberty and a sovereign people. They state that this right is guaranteed in the First Amendment right to petition.

Some would have us believe that our First Amendment right of petition is nothing more than a guarantee of free speech; that this vital constitutional protection—the very basis of our liberty—is simply a right to voice our

grievances to the government. Some would try to convince us that We the People do not have the absolute right to an honest and complete response to our petitions—or the authority to demand that our government correct the abuses and violations of our liberties that result in our petitions. Some would even go so far as to say it is merely a Right to complain, with no expectation of a response.

This is nonsense! This is dangerous talk to a free people.

We must guard against this nonsense. We must harden our hearts to these false nations that government is God. We must recognize that even in the long run government can never be rational, without a principled Constitution firmly rooted in Liberty. Government has but one legitimate purpose—to serve and protect all of the people equally. Government is not God. It is our servant. It is accountable to the People.

The right to Petition for Redress of Grievances is the final protection—the final, peaceful check and balance in our system of Constitutional government in which the government derives its limited powers from the consent of the sovereign people. This is the right which publicly reveals and reiterates for all, who is Master and who is Servant.

The way the system is now working, however, is in sharp contrast to the way it was designed to work. The servant is taking over the House: the government has brought us to the brink; the Constitution is hanging by a thread. (We the People 2005b)

In stating their claim that the current United States government uses its power against citizens, We the People state: “[The government has] betrayed the ideals, the honor and the values of our forefathers, and have compromised the sovereignty and independence of our great Nation. Their perfidious conduct is repugnant to the Constitution and the principles upon which we stand as a nation” (We the People 2005b). Furthermore, “for over 225 years, America has stood as a beacon of light and hope to the world. People of all nations, all creeds all religions have come to our shores yearning to be free. The cause for enduring freedom belongs to all Americans” (We the People 2005b).

Within the arguments and rhetoric of We the People, the movement clearly establishes their belief that contemporary American government is an illegitimate institution. As such almost any government infringement upon private affairs is an illegitimate act. Furthermore, because citizens cannot withhold their personal taxes as a way of protesting they believe that this proves that the political and legal processes are also corrupt and illegitimate. According to We the People, any act by an illegitimate government is an act against sovereignty.

For We the People, the ultimate problem is the idea of the inequality of the power of the citizenry as compared with the government. In an effort to make all citizens aware of this and of their rights, the organization has attempted to institute their own civil action that all citizens can be a party to. The purpose is five-fold:

First, the Constitution is more than a piece of paper and the People will not let it become a dead letter;

Second, none of the unalienable rights of the People are subject to modification or seizure by the government;

Third, the government is limited by the word of the Constitution;

Fourth, there are legions of People who are willing to stand and defend their Rights, Liberties and Freedoms and the essential principles of ‘popular sovereignty’ and ‘government of by and for the people; and

Fifth, the People now realize it is their duty to meet force with force to defend against the government’s unconstitutional attempts to seize the power from the People. (We the People 2005c)

They state: “Our civil action is for the cause of civil justice—a righteous struggle, undertaken in defense of our property, our happiness and our families. It is to oppose the invasions of usurped power” (We the People 2005c).

They continue,

it is our obligation, as responsible citizens of this country, to set a proper value upon and defend to the utmost our just rights and the blessings of life. Without this personal commitment, a few unprincipled individuals would tyrannize the People, and make the massive multitude the slaves of their power. Thus, it is that our civil action is not only justifiable, but an indispensable duty to correct this wrong. (We the People 2005c)

7.2.2 Citizens Do Not Feel Part of Government; They Feel Misunderstood or Ignored

We the People continue their crusade for the abolition of the income tax in the context of government infringement upon property rights. They make clear that they believe that the government, and the Internal Revenue Service in particular, is ignoring both the law and the dictates of the American people. In making their case We the People point to the Second Circuit Court of Appeals case of *Schulz v. IRS* (395 F.3d 463[2005]). In *Schulz*, the court held that “...absent an effort to seek enforcement through a federal court order, IRS summonses apply no force to taxpayers, and no consequences whatever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS summons until that summons is backed by a federal court order” (395 F.3d 463[2005]). The court went on to declare, “a taxpayer cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the taxpayer’s reasons, or lack of reasons for so refusing” (395 F.3d 463[2005]).

We the People view this case as a landmark decision that “effectively nullifies key enforcement provisions of the Internal Revenue Code” (We the People 2005c). As such they have taken a dramatic approach to publicizing the decision and attempting to ensure IRS compliance with the case. They call the approach “Project Luther.”

The We the People Web site describes “Project Luther” thusly:

In 1517, Martin Luther nailed his “95 Theses of Contention” to the front door of the Castle Church in Wittenberg, Germany. This single, bold gesture openly challenged the doctrine of the Catholic Church and set off an unforeseen chain of events which came to be known as the “Reformation.” The effect of Luther’s action that day would forever alter Western Civilization’s perception of the authority of the Church—and in practical terms, call into question the very authority of the state.

Luther was consequently summoned to appear before a tribunal of the church-state hierarchy, and was ordered to recant his damaging assertions.

In response he uttered, “Unless I am convinced by proofs from Scriptures or by plain and clear reasons and arguments, I can and will not retract, for it is neither safe nor wise to do anything against conscious. Here I stand. I can do no other. God help me. Amen.”

Several years later, Luther went on to translate and publish the first non-Greek version of the New Testament, enabling average Europeans, for the first time, to study and comprehend the “hidden mysteries” of the Church.

It is time to take a page from Luther’s book.

It is time to challenge IRS doctrine by posting a message on its front doors. (We the People 2005d)

The idea of “Project Luther” is to post a copy of the *Schulz* decision on the front door of every IRS office with the note: “No More Personal and Private Property Without A Court Order,” this way, they believe, citizen dictates cannot be ignored. The objective is to educate the public and remind the government that the IRS and the government cannot take their income—in any form—without a court order.

No longer should any American live in fear that the IRS can order him to appear before their tribunals and produce their private papers without judicial review, or fear that their home, wages or bank accounts can be summarily stolen from them by the stroke of an IRS agent’s pen. (We the People 2005d)

The rhetoric of We the People extends further in on the federal income tax issue.

The group claims that in adding insult to injury, the government is using this “stolen”

property to finance its unconstitutional activities. We the People claim that to finance an unconstitutional war that the citizens have not sanctioned, “the IRS and the Department of Justice use intimidation by, and the power of, what is fast becoming a police state, to enforce and prosecute offenses of tax ‘laws’” (We the People 2005c). According to We the People, if we allow the government to continue to “steal” our property we are allowing them to take our liberty, our sovereignty, and our dignity.

Because We the People view the personal income tax system as wholly illegal they feel that both their substantive and their procedural due process protections are being ignored. In the view of We the People, there can be no due process of any kind when an illegitimate government metes out that process.

7.2.3 Citizens Find Government Services and Policies Ineffective

As can be seen from the foregoing, one of the most important issues for We the People is the income tax. We the People believe that the Internal Revenue Service is not only ineffective but also continually acts in an illegal manner. We the People has a list of grievances against the government in which they claim the government has acted ineffectively, illegally and unconstitutionally. These grievances include:

1. In 1913, the 16th Amendment (the “income tax” Amendment) was fraudulently and illegally declared to be ratified by a lame-duck Secretary of State just days before leaving office;
2. There is no law that requires most Americans to file a tax return, pay the federal income tax or to have the tax withheld from their earnings;
3. People who file a Form 1040 “voluntarily” waive their 5th Amendment right not to bear witness against themselves;
4. The IRS routinely violates citizens’ 4th Amendment rights against illegal search and seizure, by failing to properly obtain warrants issued

by a court upon probable cause and supported by oath and affirmation;
and

5. The IRS, as standard operating procedure, routinely and grossly violates citizens' due process rights in its administrative procedures and operates far outside the boundaries of U.S. law. (*We the People* 2005b)

In an effort to get these grievances heard, We the People has filed a lawsuit against the United States government, various agencies, and various officials. They currently have over 2000 named plaintiffs from all over the country and are adding more. The current state of the lawsuit is pending in the United States District Court for the District of Columbia (Case No. 04CV01211).

The brief for the plaintiffs states that the complaint arises from

the failure of the President of the United States and his Attorney General and his Secretary of the Treasury and his Commissioner of the Internal Revenue Service, and the failure of the United States Congress, to properly respond to Plaintiff's Petition for Redress of Grievances against their government, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money, and "privacy" clauses. (*We the People v. the United States Government* 2005, 66)

Furthermore, the complaint also arises from the "Executive Branch of the United States government in its retaliation against individual Plaintiffs for Petitioning the government for redress of grievances..." (*We the People v. The United States Government* 2005, 66).

The plaintiffs are asking the court for declaratory relief by "constraining the defendants to meet their obligations under the law and relevant rules" (*We the People v. the United States Government* 2005, 65). In addition, they are requesting a preliminary and temporary injunction against the United States Internal Revenue Service and the Department of Justice "from taking...retaliatory actions against named plaintiffs..." (*We the People v. the United States Government* 2005, 65).

In the most recent action on the case the government's motion to dismiss, the complaint was denied. The plaintiffs are requesting a jury trial. The case has not yet been set for trial.

It is ironic that We the People is using the judicial system to attempt to get justice, in that they have, on numerous occasions, questioned the legitimacy and the effectiveness of the American judicial system. To illustrate this, one need look no further than their comments on the case of Dick Simkanin. Simkanin, a Fort Worth man, is seen as a hero in We the People for refusing to withhold income tax from his employees and for refusing to pay personal and business income tax. Simkanin was indicted for these actions. Regarding Simkanin's dealings with the judicial system, We the People have stated:

1. Simkanin's indictment was "legally insufficient, severely flawed in its construction, and completely devoid of legal facts."
2. "The indictment of Dick Simkanin was a blatant act of government conspiracy and fraud."
3. "It is a sickening, but irrefutable fact, that Dick Simkanin did not receive a fair trial."
4. "...the government placed one or more people on the grand jury and the trial jury to influence the other jurors to indict and convict Simkanin..."
5. "Truth and Justice were denied in the courtroom."
6. The government "conspired to prevent the juries from hearing the truth. Like many other American patriots who have been falsely accused, prosecuted and convicted by dishonest federal prosecutors and corrupt judges, Dick Simkanin was not allowed to defend himself before as jury of his peers." (We the People 2005e)

Although the above tirade is directed at the judiciary, We the People believe that injustice is far more widespread than the judiciary alone. Virtually every branch of the government and the bureaucracy commit varied injustices on the citizenry daily. On one of their numerous public broadcasts, We the People stated:

Our Constitution and Bill of Rights are hanging by a thread. America, as envisioned by our founders, and preserved by the blood of those who have fought to keep us free, will not survive without constant vigilance by We the People. Today, the majority of our elected representatives, our judges, and the heads of our federal law enforcement agencies, are systematically, and with impunity, violating their oaths of office. (We the People 2005c)

They have betrayed their sworn and sacred obligation to support and defend our Constitution and Bill of Rights. Every day, more and more of our People are being denied equal justice in our courts, protection of our private property, and respect for our unalienable rights and dignity as free Americans. We have allowed career politicians, government bureaucrats and federal judges to generally assume vast powers that were NOT delegated to them by We the People in our Constitution.

If America is to survive as the hope of the world, we must resolve to bind our government down once again by the chains of our Constitution and Bill of Rights. (We the People 2005c)

Finally in making their case against the government, We the People is not only suing the government, they are also taking their case to the American people. We the People has taken out full-page advertisements in the *New York Times* and *USA Today* publicizing the lawsuit and attempting to recruit new plaintiffs. In an advertisement appearing on February 10, 2002, We the People ask: "IRS & Department of Justice: Why Won't You Answer Our Questions?" They list their grievances, they detail the constitutional crisis that is upon the American people, and they provide details of the lawsuit.

In stating their views on government ineffectiveness, We the People take an "us versus them" mentality. They state that "while average Americans have been

preoccupied with earning a living, raising our children, and trying to be law-abiding citizens, our government, for decades, has been diligently working behind the scenes to assume more and more power and control over our daily lives” (We the People 2005c).

Furthermore, they claim

working Americans have been enslaved by a fraudulent income tax system that steals the fruits of our labor and squanders our financial resources on unconstitutional government programs, aid to corrupt foreign governments, and preemptive military intervention across the globe. It is sad but true—the average American family today pays more in taxes—than it pays for food, clothing, and shelter combined. (We the People 2005c)

They believe that the government is not only stealing the money of average citizens, but also using the ill-gotten gain to engage in illegal activities instead of using the money to strengthen the American infrastructure and increasing public goods and services.

We the People state that their very reason for existing is to ensure that the government does not abuse their power and effectively addresses the dictates of the citizens.

Although few are aware of the battle that rages, our Republic currently faces its most significant challenge ever—to restore Constitutional Order and the reclaim the fundamental Liberties which have been seized by those that would deprive us our Freedom. Despite the sacrifices of over 200 years, our Constitution today hangs only by a thread.

As our government continues to systematically plunder our People’s wealth, ignore constitutional checks and balances and destroy the last vestiges of Freedom, our nation continues its dangerous descent into debt, decay and despotism.

The root cause is that the People, through ignorance, apathy and institutionalized tyranny, have allowed their servant governments (and those that benefit from its largesse) to “take over the house”, i.e., to act without lawful authority in violation of our founding documents, including our federal and state Constitutions.

Our overall purpose is to expose, confront and correct governments

operating outside their written, lawful authority and to institutionalize a nationwide program of civic vigilance to prevent future abuses and ensure the continuance of Liberty for our posterity. (We the People 2005a)

The argument that the Internal Revenue Service is ineffective and the entire taxation system is illegitimate is something of an oxymoron. It is analogous to a criminal defendant claiming, “I didn’t do it, but if I did, it was self-defense.” The two are incongruous. In the case of We the People’s argument, it begs the question; can that which is illegitimate ever be effective?

7.2.4 Evidence and Documentation of We the People

We the People, like all patriot groups, use the founding documents in order to make their case. In fact, their case is that the founding documents are being bastardized. They urge a literal reading of the Declaration of Independence, the United States Constitution, State Constitution, and the *Federalist Papers*.

They go a step beyond merely using these documents as evidence for the legitimacy of their views; however, they also actively encourage education based on these documents. We the People Foundation for Constitutional Education was established to fulfill the need for proper education including more information, awareness, and knowledge of the Declaration of Independence and the federal and state constitutions. This includes education about the sovereignty of the people “whose will the constitutions are designed to express, and about the government that they are meant to control through their constitutions” (We the People 2005a).

The Foundation is designed to carry out the broad scale educational program required to counteract the public ignorance and apathy... hampering the development of citizen vigilance and the

acceptance of popular sovereignty essential to proper governance of our constitutional democratic republic. (We the People 2005a).

We the People state the “Foundation is an organization devoted to the a-political, public interest, teaching civility ‘content’ and the expression of the Jeffersonian ideal of a way of life rooted in constitutionality and civic action” (We the People 2005a).

7.3 Conclusion

In making their case for limited government, for a constitutional republic, for an effective government working within their power for the people, We the People make an impassioned plea for the assistance of all Americans:

We urge all Americans to move beyond the fear and anguish of confronting these truths and move to help us restore our Republic and our Constitution.

Do not accept the images you see on the network news as the only reality that is possible for this nation and, indeed for this planet.

Do not set your benchmark for your personal standards of freedom and liberty upon the ghastly abuses of mankind that are lived daily across this Earth.

This standard is not what is, in Mexico, or in Central America, or in the Pacific Rim, but what was in America.

Believe in the Constitution and the ideals of freedom that were once taught in schools. Consider in your heart why our forefathers committed to sacrifice their lives, their fortunes, and their sacred honor...to surrender it all for God and Country.

Believe that regardless of what the future holds—the spirit of the People, the Blessings of liberty and the Light of our Creator, can—and will—deliver this nation to a place where the true promise of the America can be lived by all in our land and offer itself as beacon of hope for all mankind.

We have the law on our side.
We have right on our side.
We have the Constitution on our side.
(We the People 2005b)

CHAPTER VIII

UNITED WE STAND, DIVIDED WE STAND: TENUOUS LEGITIMACY

The principle that the end justifies the means is individualist ethics regarded as the denial of all morals. In collectivist ethics it becomes necessarily the supreme rule: there is literally nothing which the consistent collectivist must not be prepared to do if it serves 'the good of the whole,' because 'the good of the whole' is to him the only criterion of what ought to be done. —F.A. Hayek

Resistance to tyranny is service to God. —James Madison

But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. —James Madison

The starting point for this research was the proposition that the common means for legitimizing the administrative state were ineffective when dealing with citizens in the administrative arena—especially those citizens who have become so disillusioned with the administrative state that they have attempted to find refuge in antigovernment movements. In order to explore this issue, the common means for legitimizing the

administrative state—expertise, virtue or public service, and leadership and vision—were operationalized using Berman’s sources of citizen disenfranchisement from government. Those sources of citizen disenfranchisement are as follows: (1) when “citizens believe that the...government is using their power against them or otherwise not helping them; (2) [when] citizens do not feel part of...government, or they feel misunderstood or ignored, and (3) [when] citizens find local government services and policies to be ineffective” (Berman 1997, 106). This framework was used to look at three antigovernment groups.

Interpreting the case studies of the antigovernment groups within the context of this framework provides new insight into both new and enduring questions: How do individuals in domestic antigovernment groups perceive their relationship with government, and specifically, why do they feel that the current institutions of government are illegitimate? How do the views and actions of individuals involved in domestic antigovernment groups undermine or enhance the legitimacy of the administrative state, and in turn constitutional democracy?; and What are the implications for the administrative state and for American constitutional democracy?

8.1 The Antigovernment Groups’ Common Ground

For many of the antigovernment groups in America—whether primarily concerned with state sovereignty, citizen sovereignty, the perceived overwhelming power of the administrative state, or the perception that the government has become an illegitimate institution—there is common ground. These groups feel that the government has been so bastardized from its original purpose and intents that it is no longer a

legitimate institution. The government and its actions, law, rules, regulations, and policies have robbed the average American citizen of their rights and their dignity as citizens. Specifically, the Sovereign Citizens movement, the Militia movement, and the Patriot movement all have similar views when the groups are analyzed in the context of Berman's factors of citizen disenfranchisement from government. These views are shown in Table 7.1, further explanation follows.

8.1.1 Citizens Believe Government Is Using Its Power against Them or Not Helping Them

Citizens involved in the Sovereign Citizens movement, the Militia movement, and the Patriot movement all believe that the government and its agencies use their powers against them and do nothing to help them. All of the groups emphasize liberty in this context. The Republic of Texas refers to the government as “our tyrannical captors” (Republic of Texas 2001b) and catalogs the list of government agency abuses regarding family, career, children, health, religion, the economy, and society in general. The Michigan Militia states, “[w]e have a vast administrative state with minimal control over the administrators. Because the courts have shown a casual attitude toward administrative justice, thousands of administrators effectively have arbitrary power over millions of citizens” (Bovard 1999). In discussing how government power takes away citizens' liberty, the militia emphasizes gun ownership and government intervention into private affairs. Finally, We The People claims that the “government no longer honors the Constitution...[and is] [a]n arrogant, out-of-control and unaccountable government that

has no respect for the precious liberties of every American citizen [that] is destroying our sacred Bill of Rights” (We The People 2005b).

Another commonality between the groups and their view that the government uses its power against citizens is in the area of criminal justice and the judicial system. All of the groups express a distrust of the American justice system and believe that it denies citizens justice. The Republic of Texas emphasizes the denial of justice to those

Table III. Factors of Citizen Disenfranchisement and the Antigovernment Movement

Factors of citizen disenfranchisement	The Sovereign Citizens movement: The Republic of Texas	The Militia movement: The Michigan Militia	The Patriot movement: We The People
Citizens believe government uses its power against citizens	—Government agencies use their power to overregulate the everyday affairs of citizens (career, family, children, health, religion, the economy). —The judicial system uses its powers to deny justice to citizens.	—Government agencies use illegitimate administrative discretion to control citizens and to deny them liberty —The judicial system uses its powers to deny justice to citizens.	—Government is out of control and unaccountable and uses its powers to deny citizens their rights regarding gun control, federal income tax, and liberty. —The judicial system uses its powers to deny citizens justice.
Citizens do not feel a part of government	—Government ignores the law and does not listen to citizens’ concerns regarding property and sovereignty.	—Government ignores the law and does not listen to citizens’ concerns regarding property, gun control, and the right of the militia to exist.	—Government ignores the law and citizens’ concerns regarding property and taxes.
Citizens find government services/policies ineffective	—Ineffective handling of the incident with the Branch Davidians at Waco, Texas by law enforcement. —Generally, however, effectiveness not a huge concern for the group.	—Ineffective handling of the incident with the Branch Davidians at Waco, Texas and with Randy Weaver at Ruby Ridge, Montana by law enforcement. —Generally, however, effectiveness not a huge concern for the	—Ineffective use of resources and interpretation of the law by the Internal Revenue Service. —Generally, however, not a huge concern for the group.

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individuals involved in the Branch Davidian standoff in Waco, Texas and the power the government used against the group. They also detail injustices that their members have faced in the judicial system. The Michigan Militia emphasized the government's abuse of power during the incident at Ruby Ridge, Montana and the Branch Davidian standoff in Waco, Texas. And like the Republic of Texas, they detail injustices that their members have faced in the judicial system. We The People also believe that their members have been denied justice by the judicial system, particularly in their tax protest, and they believe that the internal revenue services abuse of power is criminal.

All of the groups believe the only way to restore liberty to the citizens and to put an end to the abuses of current government institutions is to return government rule to an earlier period in history where minimalist government was the norm. Although the movements differ somewhat in their definition of what that minimalist government is, they all agree it is government rule that rests with the people. The Sovereign Citizens movement seeks to return sovereignty to the people and have the state be the independent self-governing body. They believe this is the only way they can be free from the tyranny of the illegitimate federal government. The Militia movement argues for local rule. They believe the county seat should be the highest level of government. This is the closest level to the citizens and it allows for true community sovereignty and rule. Finally, the Patriot movement makes a case for returning to a constitutional republic where each state is a republic and the citizens of each state are sovereign. Regardless of the form of the government, the point is clear, all of the movements believe that big government and the

institutions of big government—the administrative state—are illegitimate entities and the only way to true reform is by regressing to earlier times. As a blueprint for this, all of the groups look to the founding documents and interpret them to legitimize their stance.

8.1.2 *Citizens Do Not Feel a Part of Government and Feel Misunderstood and Ignored*

The groups all find common ground in the fact that they all believe that the government and its institutions ignore the law. For Sovereign Citizens groups this is really their reason for existing. The Republic of Texas believes that Texas was illegally annexed and the government continues to uphold the legal fiction that Texas is a part of the United States. They state: “[W]ith the fraud of ‘real estate’ and warranty deeds perpetrated by...Congress...upon Texas...owning land has become extinct. You only think that you own your land when in reality it is held in royal (real) estate”

(Advertisement of the Republic of Texas 2003). They further state that the entire state is held in “martial law” (Republic of Texas 2003a). In essence, they are claiming that the government is ignoring the sovereignty of the people of Texas.

The Michigan Militia believes the government ignores the law and the needs of the people regarding property, gun control, and the right of the militia to exist. They believe the government ignores the law when they take private property for a public use, or—as some argue is the case with *Kelo v. City of New London, CT*—for a private use. They feel that the second amendment’s words, “the right of the people to keep and bear arms shall not be infringed,” are absolute and any action on the part of government agencies to regulate gun ownership is a clear case of the government violating and ignoring the law for their own needs. Finally, the Michigan Militia believes that the

citizens are ignored and that the government acts illegally when it denies the right of a citizen militia to exist. They, again, point to the second amendment and the phrase, “a well regulated militia, being necessary the security of a free state...,” as being absolute and any attempt to regulate the militia is against the law.

For those in We The People the ultimate example of the government ignoring the law and citizens concerns is in the area of the federal income tax and property rights. We The People claim that the IRS is ignoring the tax laws and taking citizens property in order to fund government activities that the American people do not condone—namely the war in Iraq. Along with this, they believe that the United States Patriot Act ignores the rights of American citizens and violates those rights for the government’s own purposes.

All of the groups feel that the government and its agents ignore both the citizens and the law; consequently, all believe that they have no substantive and procedural due process rights when it pertains to property interests. They view the government’s actions as yet another example of unnecessary infringement on personal rights. In order to restore their rights and to have their voices heard, they groups, again, urge a return to the concepts espoused in the founding documents as a way of restoring inalienable rights.

8.1.3 Citizens Find Government Services and Policies Ineffective

Once again, all of the groups have similar sentiments regarding the effectiveness of government services and policies. Here the groups refer to the ineffective justice system and the ineffectiveness federal law enforcement. All of the groups believe justice is a fundamental principle of liberty that provides a basis for our civil, legal, and political

institutions. As illustrated in the cases, all three movements hold justice as a sacred value of civil society. Furthermore, all of the movements and the groups highlighted tend to focus, not on justice itself, but on justice denied.

All of the movements point to specific instances where they believe justice was denied to the citizens and federal law enforcement was woefully ineffective. The Michigan Militia and the Republic of Texas both point to the incident at Ruby Ridge, Montana and the Branch Davidians in Waco, Texas as examples of where the FBI and the ATF were ineffective in bring about a resolution to a conflict with citizens. Both groups, and We The People, also highlight the plights of their members who have had trouble with law enforcement. In all cases the groups see their members as innocent political prisoners who have been railroaded by an ineffective justice system. All three of the illustrative groups believe that it is in fact unjust to require citizens to comply with taxing, licensing, registration, and other administrative requirements. They believe that this is simply another method of control forced on the citizen by the federal government.

This is the extent of the ineffectiveness argument that the groups make, instead they focus on government abuses of power and oppression. For these individuals this is really a case of the government being too effective. The belief is that the government overregulates private affairs and ignores public dictates. In essence the groups argue that the government and its agents it is involved in affairs that it has no right to, not that it is performing poorly. The implications of the will be discussed further below.

8.2 The Antigovernment Movement and the Legitimacy of the Administrative State

As explained in Chapter 1, Berman's factors of citizen disenfranchisement were used in the case studies to operationalize Stivers' common bases of administrative legitimacy—virtue or public service, leadership and vision, and expertise. Berman's construct of when citizens believe that government is using its power against them or otherwise not helping them was used as an indicator of whether administrative legitimacy based on virtue or public service is being adequately expressed to the citizens. The argument is that if citizens in the antigovernment movement believe that administrators are using their power for their own self-interest and are not helping the ordinary citizens, then seemingly virtue and public service are not, by themselves, adequate or effective means for legitimizing the administrative state.

When the administrative state is legitimated on a base of leadership and vision, the administrator must show the citizen that he is acting *for* the citizen—that he understands their needs and concerns and he has the ability to make certain those needs are met and the concerns are meaningfully addressed. This concept of leadership and vision was explored using Berman's idea that some citizens report that they do not feel a part of government and feel misrepresented and ignored. If citizens believe that they are not a part of government, that they are being misrepresented and ignored, then using leadership and vision as a base for legitimizing the administrative state is not effective.

Finally, Berman's idea of when citizens find government services and policies to be ineffective was used as an indicator of whether administrative legitimacy based on expertise is being adequately expressed to citizens. The argument is that if citizens in the antigovernment movement view administrative actions as ineffective, then an argument

for legitimacy based on expertise alone is clearly inadequate to legitimize the administrative state to citizens, because they do not see the expertise in action.

The factors of citizen disenfranchisement and the resulting implications for bases of the legitimacy administrative state are shown in Table 7.2. In generally, the results show that virtue or public service and leadership and vision are not effective bases for legitimating the administrative state. The results further show that government/administrative expertise does not seem to be a relevant factor to these citizens for legitimating the administrative state.

Using the construct of when citizens believe that government is using its power against them or otherwise not helping them as an indicator of whether administrative legitimacy based on virtue or public service is being adequately expressed to the citizens, shows that citizens in the antigovernment movement do not believe that administrators are virtuous or are public servants acting for the public good. Citizens in the antigovernment movement believe that administrators are using their power for their own self-interest and are not helping the ordinary citizens. They view the government and its institutions as abusive and oppressive. Virtue and public service are not being adequately expressed to the citizens through the actions of the government or the administrative state. The implication is that if these maxims of virtue and public service are not being expressed to citizens, then they *are not* effective bases for legitimizing the administrative state.

Legitimizing the administrator state on a bases of leadership and vision requires that the citizens sees the administrator is acting *for* the citizen—he understands their needs and concerns and he has the ability to make certain those needs are met

and the concerns are meaningfully addressed. This concept of leadership and vision was explored using Berman's idea that some citizens report that they do not feel a part of government and feel misrepresented and ignored. Citizens in the antigovernment movement report that they believe that the government not only ignores the citizens, but they also ignore the law that the citizens have endorsed. They believe that citizen's concerns and wishes have little effect on the actions of the government and its agents and that they act in their own interests. The implication for leadership and vision as a base for legitimating the administrative state is that because it is not being shown to the citizens through their actions it is not an effective means of legitimization

Finally, Berman's idea of when citizens find government services and policies to be ineffective was used as an indicator of whether administrative legitimacy based on expertise is being adequately expressed to citizens. Citizens in the antigovernment movement emphasize the ineffectiveness of federal law enforcement agencies when dealing with citizens; however that is the extent of their ineffectiveness complaints. As stated above, the question for these citizens is not one of government effectiveness; it is a question of government legality. Because they view the government and its institutions as illegitimate, the question of effectiveness is irrelevant. In this context, government effectiveness is evidence of too much government doing what it shouldn't be doing and doing it well. The implication for the administrative state being

Table IV. The Antigovernment Movement and the Legitimacy of the Administrative State

Factors of citizen disenfranchisement	The Sovereign Citizens movement: The Republic of Texas	The Militia movement: The Michigan Militia	The Patriot movement: We The People	Bases of legitimacy
Citizens believe government uses its power against citizens	—Government agencies use their power to overregulate the everyday affairs of citizens (career, family, children, health, religion, the economy). —The judicial system uses its powers to deny justice to citizens.	—Government agencies use illegitimate administrative discretion to control citizens and to deny them liberty —The judicial system uses its powers to deny justice to citizens.	—Government is out of control and unaccountable and uses its powers to deny citizens their rights regarding gun control, federal income tax, and liberty. —The judicial system uses its powers to deny citizens justice.	<i>Legitimacy based on virtue or public service:</i> —Citizens believe that government is abusive and oppressive. They do not view the government and its agents as virtuous or as public servants acting for the public good.
Citizens do not feel a part of government	—Government ignores the law and does not listen to citizens' concerns regarding property and sovereignty.	—Government ignores the law and does not listen to citizens' concerns regarding property, gun control, and the right of the militia to exist.	—Government ignores the law and citizens' concerns regarding property and taxes.	<i>Legitimacy based on leadership and vision:</i> —Citizens believe that the government and its agents ignore both the law and the needs of the people. They do not view administrators as leaders or visionaries.
Citizens find government services/policies ineffective	—Ineffective handling of the incident with the Branch Davidians at Waco, Texas by law enforcement. —Generally, however, effectiveness not a huge concern for the group.	—Ineffective handling of the incident with the Branch Davidians at Waco, Texas and with Randy Weaver at Ruby Ridge, Montana by law enforcement. —Generally, however, effectiveness not a huge concern for the group.	—Ineffective use of resources and interpretation of the law by the Internal Revenue Service. —Generally, however, not a huge concern for the group.	<i>Legitimacy based on expertise:</i> —Generally do not find that expertise has an effect on citizen views on government. —Whether government is effective or ineffective is not the question, the question is the government's abuses of power and intrusion into private affairs.

legitimated on a base of expertise is it is wholly inadequate for citizens in the antigovernment movements.

This finding does not necessarily mean that no bases of legitimacy would be adequate for these citizens; it simply means that expertise is not an adequate foundation for legitimacy. The other bases of legitimacy—virtue and leadership—may be adequate bases for legitimacy if they are expressed to citizens through administrative practice. The citizens themselves report that they do not feel a part of government and feel misunderstood or ignored—they do not feel that the administrators are leaders or have a vision that they are using for the public interest. The same is true for administration based on virtue or public service. In fact, there is no evidence in which these groups indicate the notion of public service is meaningful to them. Citizens report they believe government is acting in its own interest, not in the public interest; hence, virtue and public service are not being expressed to citizens. If these maxims were expressed to the citizens through administrative practice they might be effective bases for legitimizing the administrative state.

One of the research questions for this study was: How do individuals in domestic antigovernment groups perceive their relationship with government, and specifically, why do they feel that the current institutions of government are illegitimate? As the above exploration of these citizens' views shows, these individuals view their relationship with government as negative and almost nonexistent. They feel the government has forgotten them. They are misunderstood or ignored and they are not a part of government. At the same time, paradoxically, they feel government pays too much attention to them and is using its power against them. Government is not only not

helping citizens, but also oppressing citizens. Individuals in the domestic antigovernment groups perceive their relationship with government as broken. Because they do not have a meaningful relationship with their government they feel that the current institutions of government are illegitimate. Government is supposed to be by the people, for the people, and of the people.

8.3 The Importance of the Antigovernment Movement to the Debate on Legitimacy

In light of the fact that one of the guiding research questions for this study was; How do individuals in domestic antigovernment groups perceive their relationship with government, and specifically, why do they feel that the current institutions of government are illegitimate?; it is necessary to discuss the importance of these individuals and groups to the legitimacy question. In other words, on what basis should we treat evidence about the roots of antigovernment feeling in these groups as relevant to weak legitimacy overall? Or, can't we just dismiss them as inconsequential?

As discussed in the argument section of this research, there are two parts to the argument that these groups have a unique insight into government and legitimacy. The first is that the loss of confidence and trust among ordinary citizens is "writ large" among the antigovernment groups; therefore, it is easier to see. It is true that most ordinary citizens do not see government as marauding invaders but because Americans are just beneath the surface pretty rugged individualists, they are not all that different, only less deeply committed. Most Americans will go along with the idea that at some point, for example, more taxes are an encroachment on their rights. These antigovernment groups, however, enable us to see a phenomenon in American political culture that it is otherwise

easy to ignore, because ordinary citizens do not do anything to “operationalize” their negative feelings, they just accept the situation. But public opinion polls continue to show that they aren’t happy about government.

The second part is, these groups, by creating enclaves for themselves in which they can pretend that they are living off the grid as much as possible, have cut themselves off from the only viable source of creating legitimacy, that is, through practice. The argument here is that human beings need the experience of wrestling with problems larger than their own in order to develop fully. This capacity to develop is what ensures that a state where citizens are active will be a well-run state, and of course, it is what ensures that over time, through practice, citizens will come to understand governing and feel a tangible sense of connection with it. As William Sullivan puts it: “Practical involvement is the precondition for reflective clarification” (1982, 66).

A government that is dependent in any sense on citizens’ confidence and trust requires active involvement so citizens can develop the necessary political sensibilities, such as belief in something called “the public interest.” As John Stuart Mill stated: “It is not sufficiently considered how little there is in most men’s ordinary life to give any largeness either to their conceptions and their sentiments... Giving them something to do for the public supplies, in a measure, all those deficiencies.” He goes on to cite serving on juries and in local government offices, saying that these duties “make them very different beings... from those who have done nothing in their lives but drive a quill or sell goods over a counter.” In public participation, the citizen “is called upon... to weigh interests not his own... to apply... principles and maxims which have for their reason of existence the common good...” (1972, 233).

The Federalist and the Antifederalists debated the importance of citizen participation during the Constitutional Convention. The Federalists rejected the notion of direct participation by ordinary citizens because of their rather dim view of human nature as too self-interested and potentially violent to be the basis of governance. For them, a government well run will be the link that maintains the people's affections and make direct participation unnecessary. The Antifederalists, on the other hand, argued that setting up a government with so few tangible connections between it and citizens would produce exactly the disaffected, ignorant people the Federalists were so worried about.

Thus, the antigovernment groups are in effect a product of our representative system, which assumes that what people want is not participation but results. Yet the comments of these groups demonstrate that effectiveness (results) is a weak source of legitimacy. Theorists like Mill and Tocqueville understood this, seeing human beings not just as creatures who can be pacified with "services" but beings whose full humanity does not develop unless they have an opportunity to exercise the better parts of their nature by tangible activity that benefits everyone, not just themselves.

One could, in fact, argue that these groups have taken basic political values (like liberty and justice) more seriously than most other citizens, and the imperviousness of the representative system to their views, the marginalization they have made a virtue of, is not their "fault" but ours. It isn't so much that they have strange views but that in our system they have nothing constructive to do with them—no place to go, no way of entering into a broader conversation and no belief that such a conversation would do them any good. They wouldn't be heard. So they are engaging in (in their own eyes) the only form of political practice open to them: resistance.

Although many citizens, scholars, and government officials pay little attention to individuals involved in the antigovernment movement—they don't hear them—these individuals and groups are worthy of study. It enhances our understanding of citizen views in general, and of the legitimacy of government and the administrative state to take a more searching look at these individuals and groups. These citizens are more passionate and vocal about government than their fellow citizens and they have placed themselves in an isolationist position such that it provides researchers a unique opportunity to see and theorize, concretely, about how citizen participation and interaction with government can affect citizen views on government. And in a broader sense, how can administrative practice change the relationship that these individuals have with their government.

8.4 Legitimizing the Administrative State through Practice

This research suggests that the administrative state cannot be legitimated in theory; it must be legitimated in practice. This is not a new idea. Cheryl Simrell King and Camilla Stivers advanced this idea in their book *Government Is Us: Public Administration in an Anti-Government Era* (1998). King and Stivers argue that in order to legitimate the administrative state in the minds of citizens, public administrators must make a connection with the citizens that they serve in their practice.

Unlike other scholars who theorize about legitimating the administrative state, King and Stivers offer concrete suggestions for how administrators can improve their relationship with citizens and legitimate the profession through action. King and Stivers believe that administrators must do the following:

1. Actively create opportunities for people to come together and deliberate: be the maker and shaper of the space for community participation.
2. Employ skills and techniques not typically associated with administration: facilitation, active listening, deliberation, negotiation, empathy, and creative conflict resolution.
3. Work to be inclusive in these efforts not only with regard to demographics, but also to ensure that all interests get to the table.
4. Give up some control, take some risks, learn from situations, move toward collaborative rather than chain-of-command type relations.
5. Identify the gap between citizen knowledge and technical knowledge and work to bridge or close the gap; help citizens understand technical information; let citizens help administrators understand what their experience has taught them.
6. Provide citizens with access to administrative processes and the work of implementation.
7. Gain support from leadership as well as adequate resources to achieve collaborative or integrative participation.
8. Make needed organizational structure changes to ensure that active citizenship and administration live on after the original implementors leave (1998, 203).

King and Stivers believe that the only effective way to legitimate the administrative state and to repair the relationship between administrators and citizens is to do so through effective and meaningful administrative action.

The concrete suggestions that King and Stivers offer are especially relevant here. Citizens in the antigovernment movement report that they do not feel a part of government, that they are ignored, and that they perceive that the government is using its power against them and not helping them. If administrators used the suggestions of King and Stivers in practice these antigovernment sentiments may lessen. By allowing for more participation in government and allowing for more deliberation and negotiation in

conflict resolution citizens would feel that their voice was being heard and that they were not being ignored by the government and administrators. Further, encouraging administrators to give up total control and engage in collaborative decision making would force administrators to interact and to listen to citizens.

Also, relevant among King and Stivers' suggestions is the notion of assisting citizens to understand the technical information and the technical aspects of administrative practice. In this way, citizens may begin to gain an understanding of the expertise necessary to run the government. This outcome is also implicated in the suggestion to provide citizens with information regarding the presses and the work of implementation. If the administrative state is demystified, citizens may feel that that they have more of a chance for meaningful and positive interactions with government.

The implication is through the *practice* of virtue or public service, the *practice* of leadership, and by helping citizens understand the technical aspects of administration—administrator's expertise—the administrative state may be legitimated in the minds of citizens. This is really the crux of administrative legitimacy.

In addition to exploring individuals involved in the antigovernment movement and their relationship with government and administration, two other guiding questions of this research were: How do the views and actions of individuals involved in domestic antigovernment groups undermine or enhance the legitimacy of the administrative state, and in turn constitutional democracy? And, what are the implications for the administrative state and for American constitutional democracy? This research shows that the views and actions of individuals involved in antigovernment movements can enhance our understanding of the problems of legitimating the administrative state and

government in general. By listening to these citizens—and remembering that they are citizens—we can learn what we as administrators are expressing, or are failing to express, to citizens through our actions. We can use this information as any citizen evaluation. This leads to the implications for the administrative state and for American constitutional democracy. Citizens must feel a part of government or government actions will be viewed as illegitimate. The implication of this is that that through the *practice* of virtue or public service, the *practice* of leadership, and by helping citizens understand the technical aspects of administration—administrator’s expertise—the administrative state may be legitimated in the minds of citizens and this, in turn, enhances our system of constitutional democracy.

NOTES

1. There are three different factions claiming to be “the” Republic of Texas. The differences between these groups are generally due to leadership concerns and not ideological questions. Other groups claiming to be the official Republic of Texas groups can be found at www.the-republic-of-texas.org, and www.Republic-of-texas.org. The group under study here can be found at www.Republic-of-texas.net. The reason this group was chosen over the others is this group is the original Republic of Texas group (although some of its leaders have changed—for instance, Richard McLaren is serving a 99 year prison sentence and is no longer in a leadership position). Furthermore, the group under study considers themselves the successor to the Republic of Texas that was in existence as an independent nation from 1836 to 1845.
2. All quotes from the Republic of Texas contain the capitalization, punctuation, and the emphasis as originally printed.
3. Daniel Miller was sent several emails asking him to clarify certain points and to discuss the republic. He did not respond.
4. Because the purpose here is to provide a detailed description of the Republic of Texas, and not to debate the veracity of their claims in detail, the merits of the case will not be discussed. Virtually all Texas historians and legal scholars, however, adamantly denounce the republic’s interpretation of Texas history. For instance *Houston Chronicle* reporter Allan Turner quotes Rex Bell, Executive Director of the University of Texas’s Institute of Texas Cultures: “[The Republic is] ignorant of their history, or their history is very selective and interpreted very heavily” (Turner, 1997). Turner further quotes Janica May, associate professor of government at the University of Texas: “The U.S.

Constitution does not tell specifically how to acquire territory. By international law, you can acquire territory by treaty, discovery or occupation. The admission of Texas to the union was very valid” (Turner 1997). Finally, for a complete examination of the republic’s case against the State of Texas and the United States see “The Republic of Texas is No More: An Answer to the Claim that Texas was Unconstitutionally Annexed to the United States” (Brock 1997, 679–750).

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