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# Government by Appointment: Bureaucratic Means for Democratic Ends

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*Eastern Illinois University*

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GOVERNMENT BY APPOINTMENT: BUREAUCRATIC

MEANS FOR DEMOCRATIC ENDS

(TITLE)

BY

William M. Gilliam

**THESIS**

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
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IN THE GRADUATE SCHOOL, EASTERN ILLINOIS UNIVERSITY  
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## PREFACE

In this short study I have attempted to place bureaucracies and bureaucratic operations in their proper context in our system of government. My emphasis is upon the political nature of both bureaucracies and their operations. These are not matters which are well understood by the vast majority of our citizens. By nature the topic is somewhat broader than I would have preferred it to be, but useful knowledge has both breadth and depth dimensions, and the student as well as the practitioner of public administration has need for both.

Debts are owed to the authors listed in the selected bibliography, as well as to many others not listed for sharpening my perceptions of many aspects of bureaucrecies, which I first learned by experience, during thirty years of service in the U.S. Marine Corps, both as a "bureaucrat" and as a subject of bureaucratic operations—military and civilian alike.

I wish to express my sincerest thanks to each member of the Political Science Department of Eastern Illinois University for the unsparing time and effort that he has given to this student on each occasion that advice or help toward a better understanding of subject matter was needed. Of course they are all completely exonerated from any shortcomings in this study, which are all mine alone. If I have not learned, it is not because the subject matter was not well taught in the first place.

To Doctor Joseph T. Connelly, my adviser for graduate study, I owe a special debt of gratitude for his patience, understanding and tactful suggestions during my entire course of study.

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## INTRODUCTION

The purpose of this study is to examine the charges that government bureaucracy is a serious threat to our constitutional system of government, particularly to our system of checks and balances, the provisions for the separation of powers and the theories of representative and responsible government. These are by no means all of the charges which have been made against bureaucracy and bureaucrats; but, certainly, they include the more serious ones. Most commonly, the charges are expressed as "the bureaucrats are taking over the government," or "the President, himself, is all right; but it is that crowd around him that bothers me." In each case reference was being made to persons who apparently have a lot to do and say about the way our government is run, even though they are not elected to a position in it. Most of us have heard the above complaints since he has been old enough to remember. It is suggested that they are as old as our government itself.

The principal reason for undertaking this study is to attempt some synthesis of the course work, independent study and practical experience, which this writer has had with bureaucracies, to test his understanding of what he should have learned from those sources. Secondly, it is hoped that this study will provide a satisfactory overview of both the administrative process and bureaucratic operations to allay the fears of some of our citizens who might really believe that the bureaucrats

are taking over our government. Lastly, of the some seven commonly accepted aspects of public administration, that one concerning the politics of administration is the one with which political scientists should be most concerned. One can become a good administrator without having studied political science, but not without learning that public administration is about equal parts of politics and administration. An early understanding of this basic fact will help students and practitioners alike.

The scope of this study is limited, primarily, to policy making and policy implementation at the level of Congressional committee, administrative agency, federal court of appeals and interest group level. While broad general policy is still made, endorsed or unmade at the highest level of the President, the Congress and the Supreme Court, the operating policies with which the public is most concerned are made or not made at the lower level. Concentration will be on the delegation of powers to agencies for rule-making, rule-application and adjudication, together with the political consequences which follow. Attention will be focused on the political aspects of bureaucratic operations, which tend to keep them in consonance with our normative concepts of constitutional government. All discussion of bureaucracies and bureaucratic operations in this study is limited to the bureaucracy of the executive branch of our government.

For the purpose of this study it will be sufficient to define the bureaucracy of the executive branch as the totality of groups of non-elective government officials characterized by specialization of functions, adherence to fixed rules and a hierarchy of authority, engaged in the administration of public policy and/or law within limits and in

accordance with standards set by Congress. The bureaucracy of the executive branch is not a monolithic organization. It is composed of many and diverse units each with a particular function to perform. The only feature that they all have in common is that they are all organized bureaucratically. The bureaucracies are composed of political appointees and career personnel who man the Executive office of the President, the twelve executive departments, the nine independent regulatory commissions, the some thirty independent agencies and the several government corporations. Not all employees in a bureaucracy are "bureaucrats." The term "bureaucrat" as used in this study refers to all political appointees (whether for set terms or not) and to the men in the top grades of the career service who have a considerable degree of discretion concerning what is to be done and how it is to be done in connection with the functions of their organizations.

The approach and methodology are this writer's own blends. The systems approach with its inputs, outputs, feedbacks and continuous cycling seems most appropriate for this study, and it is used for the principal orientation. However, the group theory approach, the distributive approach and the functional approach have some application. Governmental sub-systems deal with interest groups for the most part; and such groups are particularly interested in the distribution of benefits and costs incident to the functions of rule-making, rule-application and adjudication, which together with policy initiation form the chief functions of a governmental agency. The methodology is chiefly empirical descriptive/explanatory with principal reliance upon primary and secondary sources. For original sources, this



writer is dependant upon his experiences as an observer/participant of and in military bureaucracies over a thirty year span of military service. That experience also included dealing with governmental bureaucracies at the national, state and local levels, as well as with some bureaucracies in foreign countries.

Three hypotheses and a thesis have been formulated to guide the study. The hypotheses have been derived from a combination of study and experience. Since they are primarily expressions of values, no particular efforts will be made to disprove or verify them. It is suggested that most bureaucrats would generally agree with them. The hypotheses are as follows:

1. Bureaucratic officials have goals the same as the rest of us. Those goals usually include professional competence, excellent performance, advancement, power, prestige, influence, security and loyalty to the nation and to particular ideas, such as democracy, reasonable opportunity, reasonable equality, and social justice. More than most of us, they usually have a genuine desire and responsibility to serve, protect and promote the general interest to the extent that they can identify it in the course of their work.

2. Bureaucrats seek to achieve their goals and those of their organization in a rational manner. They have to be utility maximizers in that they must act in the most efficient manner possible, given their capabilities in the particular areas within which they must operate and the costs in time, effort and money in securing reliable information upon which to act and to generate the required support for their plans, programs and operations.

3. The so-called bureaucratic inertia is not so much a problem of a lack of ideas and plans and the willingness to push them, as it is a problem of mustering sufficient agreement and support from diverse and often warring sources to get these ideas and plans adopted and implemented. As a consequence progress by bureaucratic organizations is most commonly made in small increments, rather than by bold moves. Bureaucracies in a new and important field (NASA) or bureaucracies under crisis conditions (national emergency or war) can operate in a bold, broad and aggressive manner, simply because agreement and adequate support are forthcoming under such circumstances.

The principal thesis for this study is that appointed political executives and top grade career men who head the various bureaucracies of the executive branch of our government do in fact run our government with respect to both policy formulation and policy implementation. This thesis is not to suggest that the bureaucrats reign supremely nor that they are not subject to checks and balances by elected officials and the courts. It does suggest that federal agencies, which are essentially bureaucratic organizations designed to deal thoroughly and rationally with given problems, have become an integral part of our government. In support of this thesis, the discussion which follows will outline the factors which gave rise to the need for expanded activity on the part of the federal government, the tools selected to deal with the many and varied problems involved, the processes for dealing with them and the implications of the results for our system of constitutional democracy.

## I. BIG GOVERNMENT

### Last Days of Laissez-Faire

The dominant political ideology in this country from the founding of the Republic down to the beginning of the Great Depression in 1929 was that of laissez-faire.<sup>1</sup> The laissez-faire tradition was part of our heritage from the Whig party of Great Britain, which championed freedom from interference by government into personal affairs, particularly into social and economic matters. In short laissez-faire meant freedom from government and not freedom under government. Beyond the maintenance of reasonable national security and domestic tranquillity and the protection of life, liberty and property, nothing more in the way of interference was desired from government. Unrestricted free enterprise and rugged individualism were the cherished values included in the freedom to do as one pleased, so long as the reasonable rights of others were not violated or abused in too flagrant a manner. Limited government was what the people seemed to want and that was what they received. Of course it was considered perfectly right and proper for limited government to promote the values of the people by creating opportunities and providing subsidies. This was done. There was free or cheap land on the expanding frontier, resources were thrown open for exploitation and tariffs were provided to protect home industries. So long as these conditions could be maintained,

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<sup>1</sup>See John K. Galbraith, American Capitalism (Boston: Houghton Mifflin Co., 1952). First half of the book.

the laissez-faire ideology seemed to work quite well. However, the rapid industrialization and urbanization of America following the Civil War brought about a changed situation.

The natural consequences of the operation of that ideology were well demonstrated in America in the 1890's. By that time the frontier was closed, the railroads had been built, national markets had been developed and the major commercial and industrial enterprises had been largely monopolized by a few giants. The corporations had largely replaced personal ownership and operation and still larger combinations of corporations in the form of trusts were well under way. Great fortunes had been made, resources had been plundered, labor had been exploited and the stage had been set for the "muckrakers." Mark Twain caught the spirit of the 1870's with his, The Gilded Age (1873) and Lincoln Steffens caught the spirit at the turn of the century with his, The Shame of the Cities. Government had reacted rather weakly with the Interstate Commerce Commission to regulate the plundering of the farmers by the railroads and with the Sherman Anti Trust Act to slow down the trends toward more and bigger monopolies in business, industry and finance. No real successes could be claimed in either area.

### The Progressive Era

The beginning of the end of laissez-faire political ideology in America might well be dated from the beginnings of the Progressive movement in American politics. The Progressive movement (1906-1917) was considerably more conservative than the Populist movement which it

followed, even though the Progressives pushed some of the Populists' better ideas.<sup>2</sup> The Progressives saw dangers on both the right and left. On the right there was the threat of the loss of freedom and individualism to the growing corporate power in the economy and its effects on social institutions. On the left was the threat of the loss of the same values from mob rule, or at best some type of socialism. The Progressives were more moderate. They wished to preserve the system while ridding it of the worst abuses which had been made of it. President Theodore Roosevelt, with his Square Deal, attempted to reverse the trend toward increasing corporate power by using such means as he had at hand in the way of laws and a popularized presidency to curb more monopolistic growth and to do some "trust busting" among those monopolies which had grown too large. Roosevelt did not object to size alone. What he did object to was the monopolistic character of some corporations, which just naturally happened to be big. His main objective was to incorporate economic and social values as well as political values in government.<sup>3</sup>

Unfortunately, Roosevelt's good beginning toward reform was not continued by President William H. Taft, who fell back into the arms of the "Old Guard" Republicans. They could see nothing particularly wrong with the way the government had been run by Republicans and the Democrats alike since the Civil War. The rift in the Republican party between the Progressives and the "Old Guard" allowed Woodrow Wilson to capture the

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<sup>2</sup>Richard Hofstadter, The American Political Tradition (New York: Vintage Books, 1948), p. 199.

<sup>3</sup>John Morton Blum, The Republican Roosevelt (New York: Atheneum Press, 1968), p. xi.

presidency in 1912. Wilson, while a Democrat, was imbued with the progressive spirit. He took up where Roosevelt had left off. His style was different. Instead of using the presidency as a "bully pulpit," as Roosevelt had done, to produce needed reform, he sought reform through legislative action by Congress. Such action resulted in the establishment of the Federal Reserve Board, the Federal Trade Commission and the passage of the Clayton Anti Trust Act. Two amendments to the Constitution were passed by Congress and ratified by the states during Wilson's tenure. His legislative skills created the image of the President as chief legislator.<sup>4</sup> However, America's entrance into World War I in 1917 halted more moves by the government into the social and economic fields and farther away from laissez-faire ideology.

#### Return to Normalcy

With the end of World War I and the election of President Warren G. Harding (the first beneficiary of the last progressive reform—the women's vote) the country settled itself back for what President Harding called a "return to normalcy." Further reform or stricter enforcement of regulation of business and industrial interests seemed to be all but forgotten. Progressivism seemed to have been forgotten also. In the election of 1924, Robert M. LaFollette received only about 4 million votes and Calvin Coolidge received more votes than the other two candidates put together.<sup>5</sup>

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<sup>4</sup>Erwin C. Hargrove, Presidential Leadership (New York: The Macmillan Co., 1966), p. 53.

<sup>5</sup>Durl Noggle, Teapot Dome: Oil and Politics in the 1920's (New York: W.W. Norton and Co., Inc., 1962), p. 170.

The promotion, rather than the regulation of business seemed to be the chief policy of both Harding and Coolidge, with Herbert Hoover as Secretary of Commerce. Prosperity returned in 1922 for some but not for all of the people. The farmers, miners and industrial workers were not part of F. Scott Fitzgerald's "Jazz Age." The idea that government should enter actively into social and economic fields as it had done in the Progressive era probably never occurred to either Harding or Coolidge. Coolidge's main philosophy of government was expressed in his statement that the main business of government was business. This philosophy seems to have been accepted by Hoover when he became president in 1929.

#### The Depression

After the stock market crash in the fall of 1929 had ushered in the Great Depression, President Hoover still thought that the way out lay in extending help to business interests through government loans and to let the prosperity, which was expected to follow, flow down to the people. For this purpose and to forestall an avalanche of bankruptcies, the Reconstruction Finance Corporation was created.<sup>6</sup> This was not enough, but it was more than any previous President had done in a depression. Any idea that the federal government should do anything directly for the people who might find themselves destitute and in dire need was no part of Hoover's philosophy of government.<sup>7</sup> Apparently his business men's cabinet did little to persuade him otherwise. Perhaps they were all of the same mind on the

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<sup>6</sup> Hofstadter, The American Political Tradition, p. 303.

<sup>7</sup> Hargrove, Presidential Leadership, pp. 114-15.

subject. Mr. Hoover's life story had been strictly Horatio Alger material. He had been orphaned at an early age, reared by relatives, sent to school where he did well and then he had become a most successful engineer. He had retired at an early age and offered himself for government service. This service had included the chairmanship of the Commission for the Relief of Belgium (1914), Food Administrator for the U.S. (1917-18) and Chairman of the American Relief Administration for Europe (1919). He had also been Secretary of Commerce, as previously mentioned. His beliefs in private enterprise, efficiency, individualism and substantial laissez-faire in political matters were in Richard Hofstadter's words "All in the dominant American tradition."<sup>8</sup> He apparently never did grasp the economic situation during the depression, although to the great majority of the people it was perfectly clear. They simply had no money nor any honest means to get money to buy the things that they needed most. The depression came as a result of a number of complex factors, but they all boiled down to a lack of effective demand—people with money and the willingness to spend it for the goods and services that the country was capable of producing. Richard Hofstadter has well described the Hoover Administration as the "Crisis of American Individualism."<sup>9</sup> For the first time great numbers of Americans had faced great hardships and there was no place for them to go and nothing for them to do. Industrialization and urbanization had made them dependent upon more than just themselves. They had become dependent upon each other and, more especially, upon government for a way

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<sup>8</sup>Hofstadter, The American Political Tradition, p. 286.

<sup>9</sup>Ibid., pp. 283-311.



out of their troubles. When state and local governments did not seem able to help them, their attention focused on the federal government.

### Positive Government

#### New Deal and World War II

On March 4, 1933 President Franklin D. Roosevelt initiated positive government in the U.S. in his inaugural address. His view was that it was the chief function of government to do for the people those things which they could not do for themselves. He flooded Congress with bills during the first "100 days" calling for emergency powers for the President and the creation of the necessary administrative machinery to get the country back on its feet.<sup>10</sup> His main objective was to use government spending to create work and purchasing power for the general population. The New Deal for the "forgotten man" may not have been an unqualified success, as many have claimed; but the people who came through the Depression and were old enough to remember the conditions which existed then learned one lesson well. The powers of the federal government could be used to advantage to restore confidence in our political, social and economic institutions, to ease the effects of economic crisis and to promote the general welfare of the people.

Before the results of the New Deal could be appraised objectively, war broke out in Europe (September 1939). The production of war goods for the Allies and our own belated defense preparations tended to take up some of the remaining slack in the economy. Pearl Harbor ended the New Deal's two most stubborn problems—~~unemployment~~ and excess agricultural and

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<sup>10</sup> Charles E. Jacob, Leadership in the New Deal (Englewood Cliffs, N.J.: Prentice-Hall Inc., 1967), pp. 1-2.

industrial productive capacities. Even before the war put the economy on a full-employment full-production basis, one significant factor had already been noticed. Government spending, of all the remedies tried, seemed to have the most desired effects on the economy. When some improvement was noted, Roosevelt cut government spending in 1937, following charges of gross waste made during the campaign of 1936, and a downturn took place in 1938. As soon as spending was resumed the economy turned up again. The lessons of the New Deal were not forgotten during the war.<sup>11</sup>

While the war was still in progress various measures were considered to avoid the recession which in the past had tended to follow wars. The problem was a major one. Not only would jobs have to be found for the majority of the 12 million men and women returning from service, jobs for most of those employed in war industries would have to be found as well. The Full Employment Act of 1946 was the final result. It in effect declared that it would be the responsibility of the federal government to foster or to create conditions of full employment for all of those able to work and desirous of the opportunity to do so. In effect that act plus other social legislation put the government into the economy and into the social field to stay. This is not surprising, since the government had in effect run the economy during the war and the machinery (the bureaucracies) was already in existence to continue to do so with some modifications.

#### Cold War

Since the war, the economy has been modified from a war-capitalist economy to our present form of "democratic capitalism" which in short means

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<sup>11</sup>Hofstadter, The American Political Tradition, pp. 340-41.

adapting the economy to the greatest benefit of all in support of the new philosophy of the welfare state. Government ownership of the means of production has not been considered at all necessary, except in special cases (TVA Atomic Energy, etc.) where only the government can supply the resources, assume the risks and determine the overall political, social and economic objectives to be obtained. The great bulk of formerly government owned plants and productive means have passed into private hands. Government participation in the economy so far since World War II has been limited to fiscal policy, management of the money supply and the announcement of public policy guidelines and objectives. It still remains to be seen if this limited participation is sufficient in view of the fact that the international situation has kept the economy on a semi-war footing with the Korean conflict, the Vietnam war and other international commitments. The present rather high rate of unemployment and the increasing inflation could require stronger measures. Our experience has provided the necessary measures, but it is largely a political question as to whether or not they may be used.

#### Summary

This rather lengthy sketch of the origins of our present big government is necessary to understand the complete change in political ideology which occurred in this country in the years between 1933 and 1946. This has been the most significant change in democratic ideology in the twentieth century; and in the case of the U.S., it is perhaps the most significant change in our history. Other democratic nations have experienced the same change, whether the new system of big government fosters democratic

capitalism as in this country, or a form of democratic socialism as in Great Britain. The advent of big government has not been restricted to democratic countries alone. Authoritarian and totalitarian systems have likewise found a need for big government to handle the manifold and complex problems of modern industrialized and urbanized societies. In America, a citizen must stop to think of the remaining areas in his life in which the government has not shown either a direct or an indirect interest.<sup>12</sup> Government has ceased to be either limited or simple. It is big and complex.

It is fair to say that the rise of big government in America has been the result of four principal factors. First, was the necessity to use the powers of government to deal with the social and economic problems of the Depression. Second, was the need for the all-out effort to win World War II. Third, was the needs for reconversion and to provide the machinery for the new welfare state. Finally, there was the power and political ideology polarizations between the communist and the non-communist camps and the requirement for the U.S. to buttress-up the non-communist countries on a global basis.

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<sup>12</sup>Samuel Krislov and Lloyd Musolf, The Politics of Regulation (Boston: Houghton Mifflin Co., 1964), p. 1.

## II. THE ADMINISTRATIVE PROCESS

### The Nature of the Process

The administrative process is essentially the related acts and events in carrying out the functions of government, when viewed as rule-making, rule application and adjudication. With our Constitution providing for both separation of powers and shared powers among the legislative, executive and judicial branches, it becomes necessary to bring together limited delegations of those powers in a single person or in an organized group of persons in order to enable the government to act through that person or group. The delegation of powers is ordinarily made by Congress to the head (or heads) of an administrative agency. An administrative agency may be defined as any governmental authority other than a court or a legislative body which has the power to affect the rights of private parties through either rule-making or adjudication or both. Therefore administrative agencies (usually termed federal agencies) are a part of the executive branch of our government. It does not matter whether a governmental authority is called an office, a commission, a board, an authority, an administration, a department, a bureau, or any other name Congress may select for it; if it has rule-making or adjudicatory functions, it is an agency. Congress tends to look upon the President as its chief agent (chief administrator). He also has rule-making powers (executive orders) and adjudicatory powers (the pardoning power).

Closely associated with the operations of administrative agencies is a fast growing body of administrative law. Administrative law may be defined as the law concerning the powers and procedures of federal agencies, including especially the law governing judicial review of administrative action. This law consists of constitutional law, statute law, common law and agency made law. The bulk of administrative law relates to the delegation of power to agencies, the exercise of power by agencies and the review of administrative actions by the courts. Emphasis at present tends to focus on rule-making and adjudication and powers closely related to these two functions.<sup>1</sup>

#### Historical Development

Among the acts of our First Congress was one to do something for the soldiers who had been disabled during the Revolution. On September 29, 1789, Congress passed a law providing for the payment of pensions to "invalids who were wounded or disabled during the late war" to be paid "under such regulations as the President of the United States may direct."<sup>2</sup> Of course the President could not do the job himself. He set up an administrative agency to formulate the regulations (rules) governing eligibility for pensions and to determine the validity of (adjudicate) the claims which were expected to be forthcoming. Since that time Congress has continuously produced legislation which had to be implemented through federal agencies, utilizing the administrative process. The pattern set

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<sup>1</sup> Kenneth Culp Davis, Administrative Law Text (St. Paul: West Publishing Co., 1959), pp. 1-2.

<sup>2</sup> Ibid., p. 8.

by the establishment of the predecessor agency to our present Veterans Administration has been followed ever since by congress to establish rule-making, rule applying and adjudicating agencies. As administrative problems have become more complex, Congress has sought to define the limits of delegated powers more closely and to set the standards for their uses in a more precise manner than was done in 1789. Congress has also tended to define organizational matters, operational matters and jurisdictional matters in a more precise manner for the agencies set up pursuant to its acts in later years. The whole philosophy of using agencies and the administrative process is to use practical men (appointed) to find practical answers to problems which should be solved in an efficient and effective manner without unnecessary delay.

#### Reasons for Use

The principal reason for both the increase in the number of federal agencies and in the increasing use of the administrative process is the direct result of our change of concept from limited government to government with inherent powers to deal with any and all problems which cannot otherwise be dealt with expeditiously and adequately. There are additional reasons. First, except in extremely limited areas, Congress has never been in a position to legislate in the detail required to eliminate the need for the use of discretion by the men who will be charged with its implementation. Also, there are certain advantages for Congress and individual congressmen in being able to turn difficult problems over to federal agencies. It avoids undue criticism and pressure on congressmen and Congress itself, and it enables congressmen to do valuable "case work" on the problems for their

constituents by interceding for them with the agencies. Second, there has always been a need to bring the federal government closer to the people to obtain needed facts and information for legislation by Congress and for the operation of the agencies, as well as to change the image of the federal government from one that is far away from and high above the common people to one which has representatives close at hand. The present decentralized nature of bureaucratic operations by most federal agencies puts bureaucrats "out in the field" in close competition with the representatives of state and local governments for popular attention. Third, the administrative process is the most efficient in the use of time, man, money and materials to accomplish the ends which are sought. It is efficient precisely because an agency given cognizance over a particular policy or function is also delegated sufficient powers to deal with the vast majority of the controversies which can be reasonably expected to arise. Given responsibility for a limited function of a specific nature, the agency can organize itself in the most efficient manner, the requisite numbers and types of specialists and generalists can be assembled, proper divisions of effort can be made, cooperation and coordination can be achieved and something approaching assembly-line methods can be adapted to accomplish all related tasks in the most rational manner. What science there is in public administration is best illustrated by the use of the administrative process to define the problems, to devise methods for their solution and to solve them. Finally, the experience and expertise resulting from past and current operations can be plowed back into the system to improve and refine future operations in the same area in an on-going dynamic fashion.



### Chief Criticisms

The increased use of the administrative process has not been without its critics. The criticisms center around two major contentions. The first is the objection of some to being subjected to rules made by men who are not legislators and to adjudications made by men who are not judges. That those men might be lawyers as well as bureaucrats does not lessen the objection. These objectors might be termed the "rule by law" men who desire that what administrators are allowed to do be spelled out in detail in statute law so that anyone (if he happens to be a lawyer) might have a good understanding of just what he could or could not do without having to be told by a bureaucrat. The crux of their objection is the degree of discretion usually allowed to administrators, both as to rule-making and rule adjudication. This complaint has subsided somewhat over the years, but in the 1930's it was rampant. Professor Davis has caught the essence of this complaint and the reasons for it in a particularly illuminating article.<sup>3</sup>

The other major contention is that some agencies, and particularly the independent regulatory commissions, are simply not doing the job. Concerning the agencies mainly under the control of the President, the contention is a lack of central organization, direction and control to avoid duplication of effort, work at cross purposes and other deficiencies susceptible to correction by giving more power to the President to reorganize the whole executive branch bureaucracy and to provide guidance

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<sup>3</sup>Kenneth Culp Davis, "Reasons for Opposition to the Administrative Process" in The Politics of Regulation, ed. by Samuel Krislov and Lloyd Musolf (Boston: Houghton, Mifflin Co., 1964), pp. 47-51.

for all units. Every study of the executive branch of our government has advocated more power to the President to carry out the duties which are constantly piled upon him.<sup>4</sup> There must be a good reason why the President has not been given the recommended powers, and there is one—politics. Congress has only grudgingly given small increments of power to the President to rearrange the bureaucracies, which it created and considers its own for the most part.

There are two specifications to the charge against the regulatory agencies that they are not doing the job. First, they are not subject to even nominal control by the President and Congress has set them adrift in a political sea without adequate navigational aids. Second, that without adequate guidance from Congress and a sense of direction from the President, they have been "captured" by the very interest that they were sent out to regulate. Professor Bernstein has described the position of the regulatory agencies and their major problems and failures in a constructive criticism before a committee of Congress.<sup>5</sup> Here again the main reason that the commissions are not doing the job is politics. The regulated interests like the arrangements just as they are, and the regulated interests (or the interests which are supposed to be regulated) are powerful politically. Richard Olney, President Cleveland's Attorney General,

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<sup>4</sup> See especially the President's Committee on Administrative Management, Report with Special Studies (Washington, D.C.: U.S. Government Printing Office, 1937), and Commission on Organization of the Executive Branch of Government, Report with Special Task Force Reports (Washington, D.C.: U.S. Government Printing Office, 1949 and 1955) (Hoover Commission Reports).

<sup>5</sup> Marver Bernstein, "The Commissions Have Failed," in The Independent Regulatory Agencies, ed. by Leon Salomon (New York: The H.W. Wilson Co., 1959), pp. 59-66.

marked out the course for the regulated interests, when he wrote to the president of a railroad who had some reservations about regulation by the New Interstate ~~Commerce~~ Commission. Mr. Olney stated in his letter back in 1892:

. . . The Commission . . . is, or can be made of great use to the railroads. It satisfied popular clamor for government supervision of railroads, at the same time the supervision is entirely nominal. Further, the older a commission gets to be, the more it will be found to take the business and railroad view of things. It thus becomes a sort of barrier between the railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests. . . . The part of wisdom is not to destroy the commission but to utilize it.<sup>6</sup>

Attorney General Olney was stating an opinion of the New Interstate Commerce Commission that subsequent experience has largely confirmed as a fact.<sup>7</sup>

#### Place in Our Government

It seems reasonably safe to say that the administrative process and the bureaucratic federal agencies are with us to stay. With the pluralistic political nature of our society the process seems to offer the best opportunity for their interplay and the achievement of reasonably effective programs and policies over the years. Of course the process tends to be biased in favor of those interest groups which are organized and capable and willing to push their interests, but one might also observe that

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<sup>6</sup>Richard Olney, quoted in Davis, Administrative Law Text, p. 7.

<sup>7</sup>Samuel P. Huntington, "The Marsyas of the ICC: The Commission, the Railroads and the Public Interest" in Public Administration and Policy, ed. by Peter Woll (New York: Harper and Row, 1966), p. 58.

politics is also the organization of bias (values). Such protection as the public interest receives in the administrative process is largely dependent upon the good judgment of the appointed officials and top career men who must run the agencies in a politically charged environment.

Senator Robert A. Taft, whom no one would have accused of being a proponent of big government, nevertheless helped amend the National Labor Relations Act of 1935 to make labor unions amenable to the law and accountable for their actions.<sup>8</sup>

A number of leading politicians and public officials, Republicans and Democrats alike, as well as scholars, have expressed their general approbation of administrative agencies and the administrative process. Attorney General Herbert Brownell expressed the general sentiment on the subject in 1955 when he wrote:

Administrative agencies have become a part of our constitutional government, accepted by Congress, the judiciary and the people as an essential part of our government structure. They were created as a necessary means for protecting public interests which could not be suitably protected by the courts or other means. Administrative agencies must be permitted to function efficiently and effectively if the public interest,<sup>9</sup> which is their primary concern, is to be preserved.

It can reasonably be expected that we will see more rather than fewer federal agencies.

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<sup>8</sup> Labor Management Relations Act (Taft Hartley Act) US Code, Vol. XXXIX, Sec. 185(a) (1952).

<sup>9</sup> Herbert Brownell, quoted in Davis, Administrative Law Text, pp. 18-19.

### III. FEDERAL AGENCY OPERATIONS

#### General

##### Organization

Agencies have been brought into being when there has been a need for government to enter into a new area of our society to deal with either old or new problems. The Social Security Administration is an example of the creation of an agency to deal with a problem as old as society itself. The Federal Communications Commission is an example of an agency brought into being to deal with one of the problems of advancing technology. The agencies are usually created by Congress at the time a particular act is passed requiring the use of the administrative process for its implementation. At other times, under the press of war or national emergency, almost blanket authority has been given to the President to create agencies by executive order to carry out functions essential to the national effort.<sup>1</sup> Old agencies have been abolished when the need for them has ceased or their functions have been transferred to other agencies or new agencies have absorbed old agencies as well as their functions. Several of our present executive departments began as agencies or offices and were later raised to departmental level. The Department of Justice is an early example. Some departments, when they were formed,

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<sup>1</sup>See First War Powers Act, Statutes at Large, LV, Sec. 838 (1941).

have incorporated one or more agencies already in existence into their organizations. The Department of Health Education and Welfare is an example of such incorporation of existing agencies. The question of just which units of organization are agencies and which are not is not an easy one to answer. If a unit (bureau, office, administration, etc.) makes rules to implement legislation or it has the power to adjudicate controversies arising under the application of rules, it is an agency. It would then follow that some of the larger agencies are composed of many smaller agencies, and indeed that is true. For example, the Department of HEW has nine major units, each under an assistant secretary. One of those units is the Social Security Administration, formerly an independent agency created to implement the Social Security Act of 1935. It now has four sub-units, one of which is the Bureau of Old Age Assistance and Survivor Insurance. That bureau maintains millions of records and handles millions of claims each year.<sup>2</sup>

### Staffing

The federal agencies are staffed from two main sources--political appointees and the career service. The President and his major appointees can make up to about 1200 political appointments to positions involved in policy making. This does not mean that all of these appointments are made at each change of administration, but it does mean that the President can fill sensitive political spots in the various agencies and offices with his own men, or men who share his political outlook and values. Approximately 5,000 "super grade" career personnel with long experience or high

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<sup>2</sup>Kenneth Culp Davis, Administrative Law Text (St. Paul: West Publishing Co., 1959), p. 4.

professional qualifications (most usually both) man the top posts in bureaus, staff sections and elsewhere in the agencies, where experience, expertise and professional qualifications are at a premium. Bureau chief is considered a particularly suitable assignment by such men.<sup>3</sup>

#### Delegations of Power

Delegations of power to make rules and to adjudicate controversies are made to agencies by Congress in connection with the particular act requiring administration. The National Labor Relations Act produced the National Labor Relations Board for example. The original objections to the delegation of powers, as such, have all but disappeared. The controlling thought today in our courts is that Congress must set reasonable limits to such delegations and set reasonable standards for their uses. The Supreme Court has never found a delegation of power by Congress to a regularly constituted administrative agency invalid.<sup>4</sup> This has not been true of delegations of power to the President in two instances during the New Deal.<sup>5</sup>

Congress is seldom able to enact other than broad general policy which requires "filling in the details" by an agency or the President. There is more than one advantage to that procedure. Of course it saves time and effort required to legislate in more detail; but perhaps more important, it avoids the necessity to muster majorities on controversial

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<sup>3</sup>John J. Corson and R. Shale Paul, Men Near the Top (Wash., D.C.: The Brookings Institution, 1967), pp. 4-5.

<sup>4</sup>See Davis, Administrative Law Text, p. 32.

<sup>5</sup>See Panama Refining Co. v. Ryan, 293 U.S. 388 (1935) and Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935). In each case Congress failed to set any limits to the delegation of power to the President or to prescribe adequate standards for its use.

details which tend to put congressmen in embarrassing positions with the people back home. Also there is political capital to be made during the implementation of the policy by an agency, which might well have been lost by commitment to more details originally. In this respect the federal agencies could be viewed as agents of congress to resolve conflicts among interest groups as well as agents to put law into effect.<sup>6</sup>

### Principal Operations

The operations of all agencies fall under the three general headings of rule-making, rule application and adjudication, each of which involves politics in administration.

#### Rule-Making

The procedures for rule-making by agencies vary widely, but all leave some room for outside participation. The procedure to be followed is left largely up to the discretion and the political sense of the agency head, or heads in the case of commissions and boards. Usually rule-making involves consultation with the parties to be affected. The consultation may take place in the form of a conference, requests for written presentations, open hearings, argument hearings and even trial type hearings, depending upon the nature of the subject matter for which rule making is required. After tentative rules are made provisions exist for publication and deferred dates of effectiveness to permit petitions for changes. In addition to the agency's efforts to be fair and realistic in establishing rules, cognizant committees of Congress often like to review the proposed

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<sup>6</sup> E. Pendleton Herring, Public Administration and the Public Interest (New York: McGraw Hill Book Co., 1936), pp. 6-9.



rules for any political implications as well as to check on the agency's ability to interpret the "will of Congress." In many cases the opinion of the Attorney General may be requested on proposed rules as to legality or other matters. It is sufficient to say that rule-making is legislation in a narrow sense and for a particular purpose, authorized by Congress with representation of all interests fully allowed.<sup>7</sup>

### Rule Application

Legislation by Congress is best achieved by making basic policy and laws relating to categories of things and classes of persons for broad political, economic or social objectives. The main functions of agencies is to apply general policy or law to particular cases. The average citizen is not interested so much in what an act of Congress says as he is in how it might apply to him, personally. Of course he has vague ideas (or fears) of how it might apply; but after the rules are made, he has a much better idea. If the rules can be made clear and understandable the majority of the people will obey them by habit. Compliance is the principal objective in rule application. Self enforcing type rules are favored, if the matter being administered will permit such rules. It seldom does, and supervision is required to ensure compliance. The supervision serves two purposes. First, it encourages compliance; and second, it may disclose any shortcomings or inequities in the rules, themselves. In the course of supervision, it may also be necessary to

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<sup>7</sup>See Davis, Administrative Law Text, Chapter 6.

give advisory opinions and to issue declaratory orders to let people know where they stand in relation to the law, including what they can or cannot do and still be safely within the law. The whole idea is to lead the people into compliance rather than to force them.<sup>8</sup>

#### Adjudication

Despite the care with which agencies make and apply rules, questions will arise both as to the applicability of the rules and the fairness of decisions made under them in particular cases. The power to adjudicate controversies arising from either source is usually included in grants of power to agencies, especially to the regulatory agencies. Whether or not power to adjudicate is specifically granted, it is usually assumed to have been made short of the power to impose sanctions, and all agencies are involved in adjudicating to some degree, at least in the informal manner. Like rule-making, adjudicating is of special interest to the courts, as well as to the parties which may be involved or affected. Consequently, the agencies operate very carefully in this area to avoid violation of any private rights. The procedural safeguards of notice, hearing, right to counsel, cross examination, examination of evidence and others are carefully observed. This is not to suggest that a court room atmosphere prevails at all. In practice such adjudications are usually made quite informally in a conference-like atmosphere, where everyone can be heard with no exclusion of what he has to say. Settlement by mutual consent is the course most favored by agencies, courts and the parties involved.

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<sup>8</sup> See Davis, Administrative Law Text, Chapter 4.

If it becomes necessary to conduct a formal hearing from which one side is expected to appeal on points of law, equity or for other reasons, great care is taken to ensure that the record is complete and includes all presentations of briefs, oral arguments, testimony and all other matter which may possibly be relevant. Some cases do end up in the courts, but this is the exception rather than the rule. The rule is that agencies can handle all but a few cases out of the great volume of cases requiring some adjudication.<sup>9</sup>

### Political Operations

#### Building Support

All federal agencies have considerable support from the institution which created them—Congress. Likewise they have support from the President, the Supreme Court and important segments of the population. Presidents have not usually been overly critical of the agencies for the way they do their jobs. The Supreme Court has usually supported agency operations by exercising self-restraint in reference to their operations, so long as constitutional boundaries and boundaries to personal rights have not been crossed. However, this is seldom enough. Unless agencies can win general public approval and specific approval from the groups with which they deal, primarily, the feedback from their operations reaching Congress, the President and the courts tends to undermine the institutional support they were originally given. Perhaps the most important task for political executives is to maintain and build up institutional support by gaining popular

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<sup>9</sup>See Peter Woll, American Bureaucracy (New York: W.W. Norton Co., 1963), Chapter 3.

support from important segments of the public. The FBI, for example, is an institution itself. J. Edgar Hoover has headed the FBI longer than most Americans can remember. He has served under eight presidents.

Since the government bears upon the citizens through the agencies which are manned at the higher levels by bureaucrats, the winning of popular support is most important. Elected officers have constituents, and so do the agencies. Congress and the President like to reinforce success by giving more support to agencies which are doing a good job and have public support also. The political operations should be conducted by the agency heads to be the most effective. This does not mean partisan politics, but the politics of getting along with the people in and out of government who count insofar as the agency's principal operations are concerned. Since most political executives are now chosen for professional competence rather than political experience, the career bureaucrats who know all the pitfalls along the political trails can be most helpful with timely advice concerning who to see, when and for what.<sup>10</sup>

### Resolving Conflicts

The sources of conflicts for agencies are many. First of all there is bound to be a certain amount of conflict within the agency itself, despite the best efforts to control it. The first task for the political executive is to get his own house (agency) in order. Unless this is done, not much else can be done. Not only agency heads but cabinet members sometimes fail in this important effort. The recent change of secretaries

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<sup>10</sup>Francis E. Rourke, Bureaucracy, Politics and Public Policy (Boston: Little, Brown and Co., 1969), pp. 91-95.

of HEW seems to illustrate this point.<sup>11</sup> The resolution of conflicts arising in connection with an agency's operations are to be expected. They can usually be resolved to the satisfaction of all parties concerned and political capital can be made simply from doing the job well. Dissatisfaction among an agency's clients and frequent appeals and resorts to court actions do nothing to add to the political capital of an agency or its head. Finally, there are conflicts among agencies over jurisdictions and boundaries. Congress has not always been careful to prevent overlaps and duplications. These conflicts take two forms. One form has been called "bureaucratic imperialism" after the attempts of some agencies to take over some of the functions of other agencies.<sup>12</sup> The other form, much more common, might be called "diffused responsibility." It is well illustrated by the fact that no less than seventeen other agencies besides HEW have some responsibility in the field of education.<sup>13</sup> Resolution of conflicts in either of these areas requires a high degree of political skill to survive and to do the job well.

#### Promoting Legitimacy

Agency operations do have some effect on promoting the legitimacy of the federal government. The outputs of government, for the most part,

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<sup>11</sup>"Finch Steps Down—To the White House," Newsweek, June 15, 1970, pp. 24-25.

<sup>12</sup>Matthew J. Holden, "Imperialism in Bureaucracy," American Political Science Review, LX (Dec. 1966), 943-51.

<sup>13</sup>Richard Bolling, Power in the House (New York: E.P. Dutton and Co., Inc., 1968), p. 263.

flow through agencies; and the way the agencies handle their jobs and the people with whom they deal, more or less directly, can have a decided effect upon whether or not those people see the government as one which is meeting their needs. Of course successful operations help to create a legitimacy for the agencies, themselves. Since the advent of TV politics, it is not uncommon at all for the people to see and hear important bureaucrats discuss some of the aspects and problems of their work to further a favorable image of their particular agencies. The Commissioner of Internal Revenue has used the first page of the income tax instructions to explain the task that his agency faces and to enlist the cooperation of all taxpayers in order to do the job well.<sup>14</sup>

#### Legislative Proposals

The first hand experience gained from the implementation of legislation often leads the agencies to suggest legislative changes to clarify the law or to amend it to broaden its scope. In some cases entirely new proposals may be offered. Such proposals are most likely to take the most "friendly" route.<sup>15</sup> If Congress or the particular committees having cognizance over the agency are particularly impressed with the agency's operations or the program being administered, the legislation might well originate in Congress. In other cases, it could originate in the executive branch as part of the President's program, and in certain

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<sup>14</sup> Sheldon S. Cohen, "A Personal Letter from the Commissioner of Internal Revenue," Federal Income Tax Forms for 1967 (Wash., D.C.: U.S. Treasury Department, Internal Revenue Service, 1967), p. 1.

<sup>15</sup> See J. Leiper Freeman, The Political Process: Executive Bureau-Legislative Committee Relations, Rev. ed. (New York: Random House, 1965), Chapter 4.

cases it might originate in the agency itself. In any case the agency plays a most important part in the initiation of any legislation covering matters under its cognizance. In some cases bills have been originated by agencies and sponsored through Congress by the agency. William L. Cary gives a good account of such a bill sponsored by the SEC during his chairmanship (1961-1964). Even though the bill was considered non-controversial, it took considerable time to get it through Congress. The bill was the Securities Act Amendment of 1964 (P.L. 88-467, 88th Cong., 2d Sess., S1642, August 20, 1964). While there was no real opposition to it, there was no great support for it either.<sup>16</sup>

#### Political Aspects of Operations

This discussion of federal agency operations has been presented to indicate the political nature of all such operations, including operations within the agencies themselves. Agencies are the distributors of advantages (benefits) and disadvantages (costs) to people. Much of how this is to be done is decided politically, first at the highest level and then at the agency level. One could view the level of congressional committee-agency--interest group as "compartmentalized" democracy, except that not all significant groups in America are organized interest groups, which can push their interests into the political arena and protect them. The black, the poor, the young and the old are examples of significant groups which do not enjoy the same access as do some of the more affluent, organized and articulate groups. Nevertheless it is fair to say that the agencies are in the center of the political arena and subjected to political pressures from all sides at all times.

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<sup>16</sup>See William L. Cary, Politics and the Regulatory Agencies (New York: McGraw-Hill Book Co., 1967), Chapter 4.

#### IV. BUREAUCRACY AND DEMOCRACY

##### Democratic Contributions

As Madison said in Federalist 48, our form of government is a representative republic (constitutional democracy) with a system of checks and balances and separated and shared powers. According to our normative concepts, such a government should be representative, responsible and accountable for its actions to the people. Yet we are all well aware that the persons who obviously have the most to do with the carrying out of government functions are political appointees or career people. At best they are only indirectly accountable to the people through the elected officials. Nevertheless, it is suggested that the bureaucrats, political and career alike, help to fulfill the normative requirement for a constitutional democracy in a most satisfactory manner. This is true not only because bureaucrats share those concepts, but also because the great majority of the people with whom they deal also share them and expect the government to behave accordingly. Paul Appleby summed it up well when he said, "An indigenous bureaucracy is in many delicate and important ways a reflection of its society."<sup>1</sup>

##### Representation

Representation involves access to government to make needs and demands known. An individual or a group which does not have access to

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<sup>1</sup>Paul Appleby, Policy and Administration (Tuscaloosa, Ala.: University of Alabama Press, 1957), p. 57.



government through some element of our political system is not likely to be represented to any marked degree. There are many paths of access: political parties, elected representatives, the courts, interest groups, pressure groups and the appropriate bureaucracy--if there happens to be one. The more means of access an individual or group has the more likely that one or more of them will be able to represent their interests. The new departments of H&W and HUD have opened avenues of access for individuals and groups which before lacked any real access. Congress is under the control of the standing committees and particularly the chairmen of such committees. Consequently Congress has not been representative of national interests as much as it has been of sectional and parochial interests. Bureaucracies, which do not have parochial leanings, are often more representative than Congress in the national (public) interest.<sup>2</sup> There are two advantages to seeking representation of interests through agencies. First the agency (for good public relations) is receptive and may be able to solve the problem on the spot. Second, if the agency cannot solve the problem, although it is apparently one for which it feels responsible, it can represent the interest to Congress or to the President in a most effective manner.

#### Responsiveness

A bureaucracy having a narrow range of interests and responsibilities, compared to Congress, committee chairmen, or congressmen, is likely to be more receptive and responsive to problems under its cognizance. One

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<sup>2</sup>Norton E. Long, "Bureaucracy and Constitutionalism," American Political Science Review, XLVI (Sept. 1952), pp. 808-18.

can well imagine the response that proponents of Negro voting rights in the South could have expected from Southern senators and Congressmen—none. The same was true in the case of school desegregation as well as redistricting by state legislatures. The Supreme Court and the Department of Justice proved much more responsive to the needs in each case. Many more examples could be cited to indicate the responsive nature of bureaucratic agencies.

Bureaucracies do not necessarily wait until a problem is posed to them to become responsive. In the course of agency operations, intelligence is gained concerning problems which are developing or seem likely to develop. In either case the agency can take action by expanding its operations to include new problems, or by requesting additional power from Congress to deal with them. Aside from the ability to foresee problems, agencies also have the ability to foresee the needs of the clients or groups with which they are dealing and, in many cases, to articulate these needs in a more effective manner than would otherwise be possible. This is especially true for the benefit agencies lacking pressure group clienteles. The bureaucrat, no less than the soldier, likes to be in control of the situation around him insofar as that is possible.

### Responsibleness

In the sense of holding a formal organizational role, charged with particular duties and entrusted with the power to act, bureaucrats tend to act most responsibly. There are a number of reasons why this is true. First, the hierarchical arrangement of bureaucracies and their methods of record keeping make it extremely difficult to cover up irresponsible behavior. Second, both political and career bureaucrats have too much to lose to risk misbehavior for their own advantages. The President can remove any

of his appointees for gross misbehavior, forthwith. His appointees can remove any career bureaucrats for the same reason. Neither elected officials nor judges are subjected to restraining influences to the same degree as bureaucrats. In theory and in practice the President is responsible for all of those serving under him in the executive branch, including of course all members of the armed forces; and in turn they are accountable to him and to the officers appointed over them.

The responsibility of administrators does not end with the President.<sup>3</sup> Most administrators are shielded by several layers of bureaucracy from the direct attention of the President. The political executives appointed by the President to the top posts and their more or less personal appointees feel the greatest responsibility to the President. Most of the remaining administrators probably feel a greater sense of responsibility to Congress and to their clients and constituents. Agencies are also responsible to their staffs and to themselves to formulate rational plans and procedures and for carrying them into effect. They owe some degree of responsibility to other agencies with which they must cooperate and coordinate their activities to achieve their goals. With responsibilities owed in so many directions, it would follow that bureaucrats are inclined to behave with a high degree of circumspection and care.

### Accountability

While bureaucracies and bureaucrats are not accountable to the people directly, they are accountable to the President who in turn is accountable

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<sup>3</sup>Richard Neustadt, Presidential Power (New York: John Wiley and Sons, Inc., 1960), p. 39.

to the people. In theory the President is not responsible for the actions of those under him, but in political practice he is often held so. In this sense bureaucrats, especially those at the highest levels, might be considered much more accountable to all of the people than any senator or congressman who is elected by a local electorate. Of course a few bureaucrats, some in high places, have not resisted the temptation to profit personally from the power entrusted to them. Usually such persons are allowed to resign, but in some cases they have been dismissed by the President; and in extreme cases they have served prison terms.<sup>4</sup> Any idea that a citizen might have that bureaucrats are not accountable should be forgotten. Accountability extends all the way down to the lesser bureaucrats as well.

#### Checks and Balances

Agencies derive all of their powers from Congress. They share powers with the President and the courts only to the extent that Congress shares such powers. However, there are important checks and balances on agency actions.

#### Relations with the President

The President is generally assumed to be the head of the entire bureaucracy of the executive branch. This is true only in a nominal sense. The agencies (bureaucracies) do not owe their existence to the President. They were created by acts of Congress which also gave them statutes to administer and the resources with which to do so. Except for those

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<sup>4</sup>For a good account of cabinet level scandals see Burl Noggle, Teapot Dome: Oil and Politics in the 1920's (New York: W.W. Norton and Co., 1962).

bureaucracies directly under the President, such as those in the Executive office of the President and those under cabinet officers, Congress shares control with the President and in most cases congressional influence dominates. This is particularly true in respect to the regulatory commissions. The greatest power the President has over the bureaucracy is the power to persuade—to convince the bureaucrats that what he wants them to do is really what they should do as the best course for them in their own self interest and that of the public.<sup>5</sup> It is extremely dangerous for a bureaucrat to oppose the President in an obstinate manner. He is usually inclined to listen very carefully to what the President has to say and to wonder what the President might do if his advice is not followed. The President can always force a careful reconsideration of any action being contemplated by a bureaucrat, and he can of course cut budget requests or withhold money already appropriated as disapproved of deviant behavior. What the President can do for the top bureaucrats, his appointed political executives, especially cabinet officers, can do for lesser bureaucrats.

#### Relations with Congress

Congress holds the real power over the bureaucracies. It created them and it could, if necessary, abolish any one of them. Moreover, Congress furnishes the resources for their operations and supplies the statutes and chief policies for them to administer. It is not surprising that a good part of most bureaucrats' time is focused on congressional

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<sup>5</sup> See Neustadt, Presidential Power, p. 33ff.

relations.<sup>6</sup> Congress shares with the agencies the task of administering programs. Every agency has at least two committees in each house of Congress with more than a casual interest in what the agency is doing or not doing in carrying out the "will of Congress." Those committees are, of course, the subject matter and appropriations committees of each House. Between the top career bureaucrats and the committee chairmen there is often years of close association and understanding of what can and what cannot be done. Presidents and political executives come and go, but the chairmen and the chiefs are around a long time. They have a common trait in the ability to remember favors and fouls. The last thing a bureaucrat, either political or career, wants is to have Congress conduct an investigation into his conduct of public matters. Such investigations are not now common. This does not mean that they are not important. It could mean that the mere thought or mention of one is sufficient to produce the desired results.

#### The Courts

While the President and Congress exercise control over the agencies almost daily, the courts cannot act until a case comes before them as an appeal from agency actions or sanctions. The greatest power the courts have is the power to invalidate bureaucratic actions if they exceed the reasonable limits of delegated powers or if their adjudications lack due process in either procedure or substance. While the Supreme Court has not so far invalidated a delegation of power to a regular agency

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<sup>6</sup> See Joseph P. Harris, Congressional Control of Administration (Wash., D.C.: The Brookings Institution, 1964), Chapt. 10.

created by Congress, it has invalidated delegations of power to the President in two cases. Nevertheless, cases involving rule-making and adjudication form a considerable part of the total cases coming before the circuit courts of appeals and the Supreme Court. Roughly twenty percent of the Supreme Courts' written opinions concern administrative decisions.<sup>7</sup> As a consequence, a bureaucrat giving an advisory opinion or issuing a declaratory order on which people may act with some assurance has more than just his own opinion upon which to rely. He has a considerable body of case law concerning how the courts might view his actions. Of course it is in his best interests to be with the courts previous holdings on all matters which might just possibly end up in court. The courts are always a good check on any tendency toward arbitrary use of power. The fact that courts favor settlement of differences in pre-hearing conferences between parties, both in court and administrative procedures, helps to keep bureaucrats reasonable and resourceful in finding solutions without resort to the courts.

Bureaucrats do not like to lose court battles any more than they like to be investigated by Congress. The Administrative Procedures Act of 1946, with minor amendments, has proven to be a very useful guide, both as to matters of procedure and the protection of the rights of all parties concerned. It stresses the use of informal means to arrive at the resolution of differences encountered at all stages in the use of the administrative process.

Section 5 (b) in particular stresses settlement by consent.<sup>8</sup>

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<sup>7</sup>For an excellent account of court-agency relationship see Martin Shapiro, The Supreme Court and Administrative Agencies (New York: The Free Press, 1968), Chapt. 1.

<sup>8</sup>Administrative Procedures Act, Statutes at Large, IX, Sec. 5 (b) (1946).

### Other Restraining Influences

In addition to the institutional checks and balances, there are other important considerations which cause bureaucrats to act responsibly. One of the most important factors is the increasing professionalization of the career service and the increasing number of professionals among the political appointees as well. The ethics of professional organizations demand a rather high standard of competence and behavior as well as due respect for law and custom. The influence of one's peers in a profession tends to stabilize his actions toward rationality. To be "sound" in the view of one's peers is a value to be taken seriously. A professional reputation for responsible action is always an asset. In public administration, professionalism connotes predictability, and predictable actions are the very foundations of bureaucratic organizations and operations.<sup>9</sup>

Outside critics of bureaucratic operations serve a most useful purpose also.<sup>10</sup> They not only alert the bureaucrats and the people to the possible consequences of certain courses, but they also often have helpful suggestions to offer. Persons in some fields have made a career out of following government operations and offering learned and constructive criticisms, as well as alternate courses and different objectives. The universities seem to have contributed the majority of such persons, but the professions are not far behind. Some of these critics have served

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<sup>9</sup>See Victor Thompson, Bureaucracy and Innovation (Tuscaloosa, Ala.: University of Alabama Press, 1969), pp. 92-95.

<sup>10</sup>See Walter Gellhorn, When Americans Complain (Cambridge: Harvard University Press, 1966), pp. 218-30.



in government and have considerable knowledge of the practical side of things. Others are often given a chance to serve by being appointed as specialists, advisers or political executives.

The media and especially television does a reasonably good job of keeping the people informed on what the bureaucrats are doing or not doing by either reporting on their actions or interviewing them for news broadcasts. Panel discussions or presentations featuring bureaucrats in the news are particularly useful both to the media and to the bureaucrat. They provide the opportunity for leading newsmen to ask leading questions and the opportunity for the bureaucrat to explain what he is doing or what needs to be done. It gives him the chance to win the support of the people, or at least to avoid losing some of the support he already had. It seems that the Nixon administration is making special efforts to make government "visible."

### Appraisal

Despite all the criticism of bureaucracy in government there have been no workable solutions offered to avoid our dependence upon it. The principal suggestions offered to avoid such heavy dependence upon bureaucracy appear to be three in number. First, there is the obvious one of abolishing big government and thereby abolishing the need for a big bureaucracy along with it.<sup>11</sup> This is an old bureaucratic trick used by one bureaucrat to get rid of another that he does not like. Few people would believe that we can turn the clock back to 1800.

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<sup>11</sup>For an adverse criticism of positive government see Friedrich A. Hayek, The Road to Serfdom (Chicago: University of Chicago Press, 1944).

A second suggestion is to again try to separate politics and administration, as if that might somehow be possible and practicable in dealing with values. This suggestion would require Congress to enact statutes in such detail that any discretion on the part of the administrator would be unnecessary. Just how Congress might find the time, the information, the experience and the professionalism to do so is not clear. Ralph K. Huitt, who has studied Congress for years and is now, himself, a bureaucrat in HEW has sagely observed that "it is not easy for a feudal system to make national policy."<sup>12</sup> If it cannot make broad policy easily, it might have considerable trouble with policy in detail. Further, there has been no real evidence offered that Congress is the least bit interested in legislating in detail other than in a few particular areas. Closely allied to the original suggestion is the one to have Congress supervise the work of administrative agencies more closely.<sup>13</sup> However, it suffers from the same faults as the one to legislate in detail, but to a lesser degree.

Most scholars,<sup>14</sup> students and all the committees and commissions which have examined the executive branch favor giving more power to the President to reorganize the bureaucracy and to make it more effective and efficient. However, there are dangers to giving the President too much control over the bureaucracy, both on constitutional and practical grounds. The constitution lists the powers of Congress in considerable detail. To put the bureaucracy under the "command" of the President might well deny the

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<sup>12</sup>Ralph K. Huitt, Congress: Two Decades of Analysis (New York: Harper and Row, 1969), p. 229.

<sup>13</sup>See Charles E. Hyneman, Bureaucracy in a Democracy (New York: Harper and Row, 1950).

<sup>14</sup>See especially James M. Landis, The Administrative Process (New Haven: Yale University Press, 1938).

Congress the information and help it needs to legislate intelligently and thus interfere with its proper functioning. On practical grounds, whoever controls the bureaucracy really controls the government. This was true of our government during World War II, when for all practical purposes the President, to whom Congress had given "war powers," ran the government through the bureaucracy.<sup>15</sup> That the President should have the general authority to coordinate the activities of the bureaucracy toward the achievement of goal-oriented policies approved by Congress, few would deny. Change when it comes will probably favor more control and coordination of the bureaucracy by the President in practice rather than in theory and more of a sense of responsibility on the part of Congress to help shape some national policy as well as piecemeal and parochial policies. Interest group policies are not enough. We need more national policy. Perhaps Congress is changing as Stephen K. Bailey believes and we may yet see Congress reassert itself in the national policy making field in which the President and the bureaucracy are now dominant.<sup>16</sup>

The control of the bureaucracy is not one of America's major problems. The major problem is the production of some goal-oriented national policy by the utilization of the skills, expertise and information now present in the bureaucracies to propose such policy for the consideration of Congress and the President. The political control of our armed forces is taken for granted in America, yet military policy is proposed by military leaders

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<sup>15</sup> See Peter Woll, American Bureaucracy (New York: W.W. Norton Co., Inc., 1963), pp. 145-49.

<sup>16</sup> See Stephen K. Bailey, The New Congress (New York: St. Martins Press, 1966) for his estimate of significant changes in Congress during the 1960's.

and either accepted or rejected by the President and Congress. Why this could not be true also for the bureaucracy in the executive branch is difficult to understand. Both the armed forces and the executive branch bureaucracies are good representative cross sections of American society. If this fact contributes to our value of civilian control over the military, it would seem also that it should contribute to our value of constitutionalism in regard to bureaucracy.

## V. SUMMARY AND CONCLUSIONS

This study has traced a chain of historic events over the past 100 years, which have transformed our society from a simple agrarian one requiring only a limited amount of government to an industrialized-urbanized one requiring a strong central government with powers to deal with the many political, economic and social problems produced by those changes. The most dramatic need for big government came during the Great Depression (1929-1939) and the need has remained through World War II and the Cold War. The time when most men were small farmers, business proprietors or lone professionals seems to be gone forever in America. The interdependence of people upon each other has increased and the dependence of all the people upon the government is still increasing. Government has become the champion of most of the freedoms we enjoy as individuals and of the opportunities for the development of our capabilities in our modern mass-cultural society.

As our nation has developed, government was first drawn into the economic field to regulate business and later into the social field to alleviate some of the dislocation problems caused by the industrial revolution in America. To fill this need for government to act in a positive, informed and rational manner, the administrative process was used to fit broad policy to particular needs as they were disclosed in an on-going process. The administrative process has been subjected to

considerable criticism, but no acceptable alternative has been proposed to replace it. It does allow maximum participation by the people who are affected in arriving at acceptable solutions to problems and for the settlement of differences by consent rather than court actions. It is well accepted by those who have had some experience with its operation, and that is a steadily growing number of our citizens. Its use has given government a good insight into the needs for change as well as a measure of the requirements to effect that change.

The need for the government to deal with many and varied problems has also increased its needs for the services of increasing numbers of men and women of all skills to man the bureaucracies of the numerous agencies of government. Wherever the government has an interest in our society, it has usually created an agency to deal with that interest; and the number of interests tend to increase. Agencies bring together enough of the separated and shared powers, as delegations from Congress, to allow them to deal effectively with the implementation of both policy and statute law. The outputs of government, with few exceptions, are handled through agencies. The agencies are manned with two types of bureaucrats—the appointed political executives and the top grade career men. The political executives concentrate on major policy objectives and political considerations. The top career men provide the experience, expertise and knowledge to devise workable solutions, to avoid political pitfalls and to achieve desired results. Bureaucratic operations are especially beneficial for the continuity they provide, the information they generate and the legitimacy they help to create and to maintain for the government.

The bureaucracies in the administrative agencies of our government make valuable contributions to our normative concepts of constitutional democracy. The bureaucracies are representative, responsive and highly responsible. They are accountable to the people through their elected representatives. With narrower interests and greater depths of understanding and abilities, the bureaucracies tend to be more representative and responsive than individual elective officers, or the Congress as a whole, in their given areas of responsibility. Checks and balances are apparent in the cases of bureaucrats and bureaucracies. Their multiple responsibilities to the President, Congress, the courts, groups and the public interest operate to keep them in touch with political realities. The bureaucrat's own sense of shared values with the people and the desire for the approval of his professional and occupational peers are strong factors for responsible conduct and competent performance. The real problem is not controlling the bureaucracies but giving them some national goal-oriented policies and sufficient coordination of effort to allow them to function to a higher degree of their real capacities.

From the results of this study it appears that four conclusions may be indicated:

(a) That politically appointed officials and the top grade career men do actually run the machinery of government. However, they run it only in the direction and at the speed directed by elected officials and the federal courts.

(b) Bureaucracies and bureaucrats do not pose any great threats to our political system. On the contrary they fulfill the vital need to bring the powers of government to bear directly on the problems generated in

our present-day society, which only government has any chance to solve. While no provisions exist in our constitution for bureaucracies, nevertheless, they have become a part of our constitutional democracy through precedent, usage and custom.

(c) A more coordinated effort from the bureaucracies of all the agencies seems to be desirable. The President seems to be the obvious person to coordinate the efforts of the bureaucracies to accomplish policy goals agreed upon by both himself and the Congress. The necessary coordination can be achieved only in part through reorganization of the executive branch. A meeting of the minds between the President and Congress to give the agencies common objectives will do much more to produce coordinated action.

(d) If there is an equally reliable representative, responsive and effective substitute for the bureaucracies of the executive branch, it has escaped the minds of some of the worlds best scholars, statesmen, politicians and soldiers. Modern government can no more operate effectively without bureaucratic skills than modern corporations or modern armies. What management is to business, public administration is to government and more. Not only must the affairs of government be managed, they must also be managed within a political environment, where both political responsibility and political accountability are operative factors.



## SELECTED BIBLIOGRAPHY

### Books

- Appleby, Paul H. Policy and Administration. Tuscaloosa: University of Alabama Press, 1957.
- Bernstein, Marver H. The Job of the Federal Executive. Washington, D.C.: The Brookings Institution, 1958.
- \_\_\_\_\_. Regulating Business by Independent Commission. Princeton: Princeton University Press, 1955.
- Cary, William L. Politics and the Regulatory Agencies. New York: McGraw-Hill Book Co., 1968.
- Corson, John J. and R. Paul Shale. Men Near the Top. Baltimore: Johns Hopkins Press, 1966.
- Davis, Kenneth Culp. Administrative Law Text. St. Paul: West Publishing Co., 1959.
- Dexter, Lewis Anthony. How Organizations Are Represented in Washington. New York: Bobbs-Merrill Co., 1969.
- Freeman, J. Leiper. Executive Bureau-Legislative Committee Relationships. Rev. ed. New York: Random House, 1965.
- Hargrove, Erwin C. Presidential Leadership: Personality and Political Style. New York: The Macmillan Co., 1966.
- Harris, Joseph P. Congressional Control of Administration. Washington, D.C.: The Brookings Institution, 1964.
- Huitt, Ralph. Congress: Two Decades of Analysis. New York: Harper and Row, 1969.
- Jacob, Charles E. Leadership in the New Deal: The Administrative Challenge. Englewood Cliffs, N.J.: Prentice-Hall, 1967.
- \_\_\_\_\_. Policy and Bureaucracy. New York: D. Van Nostrand Co., 1966.
- Koenig, Louis. Congress and the President: Official Makers of Public Policy. Glenview, Ill.: Scott, Foresman and Co., 1965.

- Krislov, Samuel and Lloyd Musolf, eds. The Politics of Regulation. Boston: Houghton-Mifflin Co., 1964.
- Landis, James M. The Administrative Process. New Haven: Yale University Press, 1938.
- Neustadt, Richard E. Presidential Power: The Politics of Leadership. New York: John Wiley and Sons, 1960.
- Novogrod, R. Joseph and others. Casebook in Public Administration. New York: Holt, Rinehart and Winston, Inc., 1969.
- Polenberg, Richard. Reorganizing Roosevelt's Government: The Controversy Over Executive Reorganizations. Cambridge: Harvard University Press, 1966.
- Press, Charles, ed. The Polity: Essays by Norton E. Long. Chicago: Rand, McNally and Co., 1962.
- Ripley, Randall B., ed. Public Policies and Their Politics. New York: W.W. Norton and Co., Inc., 1966.
- Rourke, Francis E. Bureaucracy, Politics and Public Policy. Boston: Little, Brown and Co., 1969.
- Shapiro, Martin. The Supreme Court and Administrative Agencies. New York: The Free Press, 1968.
- Stein, Harold, ed. Public Administration and Policy Development Casebook. New York: Harcourt, Brace and World, Inc., 1952.
- Well, Peter. American Bureaucracy. New York: W.W. Norton Co., 1963.

#### Journal Articles

- Bachrach, Peter and Morton S. Baratz. "Two Faces of Power." American Political Science Review, LVI (Dec. 1962), 947-52.
- Edleman, Murray. "Symbols and Political Quiescence." American Political Science Review, LIV (Nov. 1960), 695-704.
- Friedman, Robert and others. "Administrative Agencies and the Publics They Serve." Public Administration Review, XXVI (Sept. 1966), pp. 195-207.
- Holden, Matthew J. "Imperialism in Bureaucracy." American Political Science Review, LX (Dec. 1966), 943-51.
- Leiserson, Avery. "Political Limitations on Executive Reorganization." American Political Science Review, XLI (1947), 68-84.

Long, Horton E. "Politicians for Hire—The Dilemma of Education and the Task of Research." Public Administration Review, XXV (June, 1965), 115-120.

\_\_\_\_\_. "Power and Administration." Public Administration Review, IX, No. 4 (1949), 257-64.

Mann, Dean E. "The Selection of Federal Political Executives." American Political Science Review, LVIII (1964), 81-99.

Pennock, Roland J. "Responsiveness Responsibility and Majority Rule." American Political Science Review, XXXVI (Sept. 1952), 790-807.

Romani, John H. "Administrative Agencies and the Publics They Serve." Public Administration Review, XXVI (Sept. 1966), 195-208.

Sapp, Carl. "Executive Assistance in the Legislative Process." Public Administration Review, VI, No. 1 (1946), 10-19.

Schick, Allen. "The Road to PPB." Public Administration Review, XXVI (Dec. 1966), 243-58.

Somers, Herman M. "The President as Administrator." Annals of the American Academy of Political and Social Science, CCLXXXIII (1952),

Tannenhaus, Joseph. "Supreme Court Attitude Toward Federal Administrative Agencies." Journal of Politics, XXII (Aug. 1960), pp. 513-527.

Witte, Edwin E. "Administrative Agencies and Statute Law-Making." Public Administration Review, II, No. 2 (1942), 116-125.

#### Government Documents

Administrative Procedure Act. Statutes at Large, Vol. LX (1946).

Commission on Organization of the Executive Branch of the Government. Report with Task Force Reports (Hoover Commission Reports). Washington, D.C.: U.S. Government Printing Office, 1949 and 1955.

General Services Administration. United States Government Organization Manual 1968-69. Washington, D.C.: General Services Administration, 1968.

Presidents' Committee on Administrative Management. Report with Special Studies. Washington, D.C.: U.S. Government Printing Office, 1937.