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Reorganization of the executive branch of the government of Puerto Rico : theoretical foundations and legitimacy of the administrative state.

Mario Acosta-Velez

University of Massachusetts Amherst

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REORGANIZATION OF THE EXECUTIVE BRANCH
OF THE GOVERNMENT OF PUERTO RICO:
THEORETICAL FOUNDATIONS AND LEGITIMACY
OF THE ADMINISTRATIVE STATE

A Thesis Presented

by

MARIO ACOSTA-VELEZ

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial fulfillment
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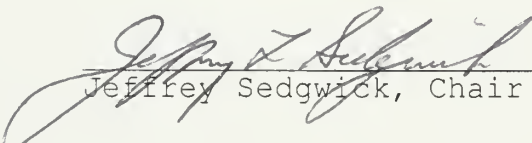
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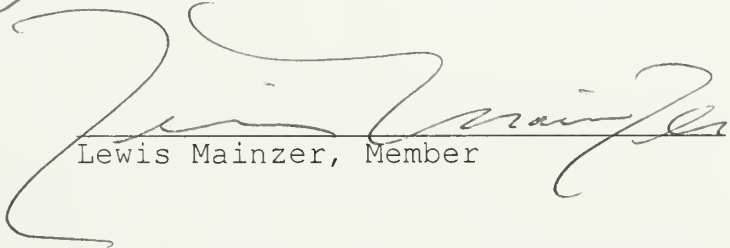
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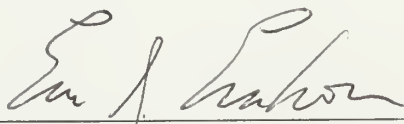
by

MARIO ACOSTA-VELEZ

Approved as to style and content by:


Jeffrey Sedgwick, Chair


Lewis Mainzer, Member


Eric Einhorn, Department Head
Political Science

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ABSTRACT

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SEPTEMBER 1996

MARIO ACOSTA-VELEZ, B.A., UNIVERSITY OF PUERTO RICO

M.P.A., UNIVERSITY OF PUERTO RICO

M.A., UNIVERSITY OF MASSACHUSETTS AMHERST

Directed by: Professor Jeffrey Sedgwick

The main purpose of the study is to provide an understanding of the evolution of a legitimate executive branch in Puerto Rico through the tool of executive reorganization. This study looks at two reorganizations of the executive branch (the first one initiated by Governor Pedro Rosello in 1993) using the theoretical perspectives that guided the evolution of the administrative state in the United States: the Founders' view on executive reorganization, the managerial perspective of the early 20th century, and the legitimacy perspective, which broadens the Founders' concept of an energetic executive and contests the managerial perspective's focus on presidential supremacy.

The first two theoretical perspectives (the Founders' and the managerial perspectives) shaped the way the Governor's role in administration was formulated and

exercised in this century and guided the evolution of a strong executive. However, this evolution created a basis for the perceived illegitimacy of the administrative state.

This illegitimacy resides in an instrumental view of public administration that confines the public administration to be used as a mere instrument of the chief executive and focuses on how to make the executive branch more responsible and directly accountable to the Governor.

This study concludes that a new discourse is necessary to bring a view of public administration as a collaborative partner in the process of governance. This new discourse has to embrace the legitimacy perspective to emphasize the functions of administrative agencies as government institutions in pursuit of the public interest. It must also recognize the formal virtue of public administrators as actors in the process of governance, and adopt the concept of the public interest as the appropriate normative basis for public administrators.

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INTRODUCTION

Executive reorganization has been a gubernatorial tool during the 20th century to change the conception of administrative authority in the political and administrative systems in Puerto Rico and to elaborate on the role of the governor in administration. This study argues that executive reorganization is offered, in Puerto Rico as in the United States, as a means to efficiency and responsibility, but is in real measure an instrument of a strengthened chief executive with heightened authority over administration. In 1949, Luis Munoz-Marin, the first elected Governor of Puerto Rico, used this tool to initiate the modern governorship. For the first time, executive reorganization constituted a successful effort to establish an administrative state with centralization of substantial managerial authority in the Governor as the chief executive. This established a precedent for later reorganizations. The most recent one, initiated by Governor Pedro Rosello in 1993, provided continuity to the enhancement of the managerial role of the Governor as chief executive of the executive branch.

This study examines these two reorganizations using the theoretical framework that guided the evolution of the

administrative state in the United States. The Founders' insight on executive organization, the managerial perspective of the early 20th Century, and the theory of legitimacy of the administrative state are the theoretical perspectives used in this study. I seek to understand how these theoretical perspectives shaped the way the Governor's role in administration was formulated and exercised in this century. The fundamental questions are: Does the reorganization movement that these theoretical perspectives guided in the context of the United States have any relation to executive reorganization in Puerto Rico? And, do they relate to the success of the first comprehensive reorganization of the executive branch in 1949?

The answers to these questions are essential to acquire a basic understanding of executive reorganization in Puerto Rico. Furthermore, understanding these theoretical models and their dominant principles of organization is a matter of great importance for examining the practice of reorganization in Puerto Rico. Based on this understanding, this study attempts to show that reorganization of the executive branch of the Government of Puerto Rico was based on an external model of executive organization conducive to the evolution of a strong

executive. However, this evolution created a basis for the perceived illegitimacy of the administrative state.

Executive reorganizations in Puerto Rico constitute in many ways an interesting political and administrative phenomena. The effect of both the Founders' conception of a strong executive and the managerial perspective's focus on executive supremacy on the evolution of the executive in Puerto Rico has not been studied extensively. This makes the practice of reorganization planning in Puerto Rico worth studying because of its contribution to the evolution of a strong governorship and its relationship to administration.

The paramount purpose of this study is to provide an understanding of the evolution of a legitimate executive branch in Puerto Rico through the tool of executive reorganization. Why did reorganizations of the executive branch occur in Puerto Rico? What form did the administrative state take? What models did the reorganizations follow? What conflicts or controversies arose during the processes? Ultimately, which of these reorganizations met the need of establishing the legitimacy of the Executive Branch of the Government of Puerto Rico?

These questions are addressed by examining the evidentiary work left behind by these reorganizations. The

empirical analysis relies on reports and recommendations, government documents, press conferences and newspaper articles. Since many of these sources were originally written in Spanish, I translated them into English for their reference in this study. In the case of the 1993 reorganization, for which many of the records are still inaccessible to researchers, I have only had access to limited empirical material for analysis. In addition, no comprehensive studies of this reorganization have been made.

The format of this study consists of five chapters. In chapter one, I examine three different theoretical perspectives on the role of the chief executive in administration that lay the framework for the empirical analysis of the reorganizations in Puerto Rico. In chapter two, I provide a summary of three federal reorganizations that applied the general principles of organization expressed by the Founders and the managerial perspective. In chapter three, I focus on the first comprehensive reorganization of the executive branch in Puerto Rico initiated by Luis Munoz-Marin through the Rowe Commission in 1949. This reorganization is treated as the founding of the Puerto Rican Administrative State. In chapter four, I discuss the most recent reorganization of the Executive

Branch of the Government of Puerto Rico, the New Beginning, and compare it to the reorganization recommended by the Rowe Commission. Finally, in chapter five, I present the conclusions of this study and address its main research questions.

CHAPTER I
THEORETICAL PERSPECTIVES ON THE ROLE OF THE
PRESIDENT AS CHIEF EXECUTIVE

This chapter examines three theoretical perspectives on the role of the President as Chief Executive. First, it examines the Founders' insight into executive organization. Second, it discusses the classical emphasis on presidential supremacy put forth in the managerial perspective. Finally, it readdresses these two views on executive organization using the perspective on legitimacy of the Administrative State, the legitimacy perspective.

In this chapter, I propose three main notions. One is that the Founders' normative view on executive organization is expressed both in the creation of an energetic executive with limited legislative interference in the business of administration and in their concern for the values of unity and responsibility as principles of executive organization. The second one is that the managerial perspective, evident during the period known as the Classical Approach to Public Administration (the period of formation of self-conscious American public administration theory), justified a presidentially-controlled executive establishment that led

to an instrumental view of Public Administration. The third notion is that the legitimacy perspective broadens the Founders' concept of an energetic executive and contests the managerial perspective's focus on presidential supremacy.

The founders on executive organization

The founders brought with them to the Federal Convention in 1787 their experience with a weak executive.

This experience conditioned their orientation toward a strong executive centered on the values of executive unity, energy, and responsibility. To understand the founders' view on the executive, a brief look at the state and national experiences prior to the Constitution is in order.

Under most state constitutions, the executive was inherently subordinate to the legislature (Thach, 1922). This subordination was reflected in features such as short terms, strict limitations on re-eligibility, and election by the legislature. According to Thach, legislative dominance also conditioned the executive's liberty of action. The executive's use of power, for example, had to be in accord with the advice of an executive council chosen, save in Pennsylvania, by the Legislature. As Thach

states, subordination was further evidenced by "the common practice of expressly submitting the exercise of either certain enumerated powers, the field of enumerated powers, or even the whole of the executive power to the legislative will" (p.29).

Through the state constitutions, the legislatures were empowered to determine all matters concerning the executive. They, by virtue of constitutional language that placed priority in the power of making laws, were considered the sovereign authority. As James Ceaser (1979) has observed, "the pressure for a more direct expression of the will of the people led to the rise of the popular branch of the legislature as the supreme and unchecked sovereign..." (p.48). The state legislatures, in Thach's words, kept the executive departments "under close supervision and control, interfered with them in their constitutional spheres, dictated to them what they should do by laws which they were unable to oppose" (p.34). For instance, Corwin (1984) notes, the Virginia constitution stipulated that the exercise of the executive power was to be in accordance with the law and that the executive could not claim any prerogative by virtue of any law, statute, or custom of England. The net effects were legislative supremacy based "on the claim to immediate representation

of the popular will" (Ceaser, p.49) and the organization of the executive "in such a fashion as to ensure a complete subordination. And such , in general, was the process followed" (p.27). As a result, executive power was diminished and the execution of the laws depended on the legislature.

Under the Articles of Confederation, a lack of national formal executive power pointed to legislative supremacy. As Theodore J. Lowi (1985) has observed, "several executive departments were created, including Foreign Affairs, War, Marine, and Treasury, but the heads of these departments were obliged to report to Congress" (p.31). These departments, Richard Pious stated, "were appendages of the legislature, not an executive branch" (quoted in Lowi, p.31). This condition shows that Congress played the roles of both legislature and executive. The consequence was a congressional inability to supply continuous direction and coordination of administrative agencies. In order to solve this problem, Kallenback (1966) points out, Congress considered the partial transformation of itself from an active administrator to the enactor of administrative laws. Its role centered on setting up permanent agencies, fixing their duties by permanent rules, providing means for

controlling them in their activities, and determining their relations to their creator.

Congress' acknowledgment of its inability to conduct the business of administration initiated a trend toward a real executive. As Leonard D. White (1948) argues in The Federalists, this transformation embodied a congressional acceptance of the superior position of the executive in relation to departments. However, it did not represent Congress' willingness to rid itself of administrative details (Thach, 1922).

Congress ensured its influence over administration by creating committees to carry out orders from itself. The naval committee, for example, had the responsibility as administrator of reporting measures for congressional consideration. It also created the standing committee of five to supervise the Treasury. These bodies had not only to report on individual matters, but also on policies and even administrative laws. In this way, Congress continued to settle matters of minute detail on the floor, while leaving to the administrative agency the ministerial duty of carrying out each decision as it was reached.

Even this ministerial system raised doubts among the founders as to its ability to provide a good administration. Hamilton, for instance, claimed that

Congress was unable to act with sufficient decision or system because of keeping too much power in its own hands and interfering as to every detail of administration. The system of boards, in his view, had the disadvantage of being slower, having less energy, and diffusing responsibility. He favored limiting Congress' function to passing legislation, for it proved its inability to conduct the business of administration. This position evidenced Hamilton's tendency toward the value of executive responsibility for administration as a quality of a good government. As he said in Federalist 71, "It is one thing to be subordinate to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government" (Federalist Papers, p.433).

We can infer that the state and national experiences prior to the Constitution pointed to the functional separation of powers as a solution to the problem of lack of executive power. These experiences led the founders to accept the assumption that the separation between Congress and the Executive would not only provide a protection against abusive power, but also produce governmental efficiency. This set the basis for the founders' concern

on executive organization. Let us see how this concern was expressed in the Philadelphia Convention.

In 1787, the Founders took a more favorable view of executive power (Ceaser, 1979). As Corwin (1984) suggested, a main concern for the delegates in the Federal Convention was how to solve the problem of weak executive power with regard to administration. To address this challenge, the Framers of the Constitution agreed upon establishing a national chief executive with the power of overall superintendence of government operations (Kallenback, 1966). The term chief executive, in the Founders' view, referred to the President's role of guaranteeing the faithful execution of the laws and maintaining an effective executive authority over the administrative bureaucracy. As to establishing the role of faithful execution of the laws, the Founders were reacting to the problem of distribution of power as well as to the bases of political authority prevalent in the state governments. The Founders, states Ceaser, "saw the popular assembly as a symptom of a reliance on popular authority" (p.49).

This base of political authority was for the founders an informal influence that represented a threat to constitutional government. They looked to the President as

the embodiment of energy and statesmanship. According to Ceaser, statesmanship, in the Founders' view, referred to the ability to use personal judgement to distance oneself from the immediate pressures of public opinion. The President was, Ceaser says, "to reach beyond the partial and selfish interest of any group within society and consult the public interest as a whole" (p.50). Thus, the Chief Executive was to be a strong executive capable of restraining any excessive tendencies toward popular authority.

The Founders' emphasis on non-partisan election supports this conception of a Chief Executive. The role of the Chief Executive was to be non-popular, which meant based on the formal character of its office. His power was to rest on the legally defined prerogatives of the office "in which the claim to rule was based on the constituted authority of the institutions' (Ceaser, p.49). This implies that the purpose of election was only to select the president, not to arm him with authority beyond that provided by the Constitution. One can say that the Founders, by assigning the President the role of guaranteeing the faithful execution of the laws, intended to prevent the President "from becoming a popular favorite" (Ceaser, p.51) They did not favor a president who was a

popular leader possessing a mandate, for this would lead to favoring popular demands. Therefore, the purpose was to secure that presidential authority "was not overwhelmed by informal or extraconstitutional authority, by power based on 'charisma' or assertions of representations of the immediate popular will" (Ceaser, p.51).

The role of maintaining an effective executive authority over the administrative bureaucracy presupposes the framers' purpose of placing an energetic president at the top of the executive structure. Clinton Rossiter (1960) contends that the framers charged the President with the duty of running the government to produce "good administration." According to Rossiter, the framers considered the President to be the person able to fulfill this duty. This reflects the framers' aim at making the President accountable for the conduct of administrative affairs. The President, observes Rossiter, was to be accountable for the efficiency of the national administration. Thus, the framers' goal was to secure a strong executive capable of guiding the executive establishment they created and promoting responsibility and efficiency to assure good government.

At the Constitutional Convention, The Founders addressed several issues regarding the national executive.

Constitutional considerations included issues such as executive-legislative separation, the number of the executive, election of the executive, the executive's salary, and the executive's administrative authority. Relevant to the argument advanced in this study are the issues of separation, number, and administrative authority.

The plans presented at the National Convention constituted embodiments of the framers' views on executive organization and the role of the President as Chief Executive. The Virginia plan, the first presented at the Convention by Edmund Randolph (but mostly written by James Madison), advocated for executive independence as a necessary ingredient for the organization of the executive. The number of the executive was undetermined, probably because Randolph, the formal presenter of the plan, opposed a unitary executive while Madison apparently favored it. As Thach reasons, the executive, had this proposal been approved, would have been a small committee of states with the responsibility of carrying out the laws. As a reaction to the proposal, Wilson (from Pennsylvania), who "was the strongest supporter of the strong executive" (Corwin, p.11), stated that there should be a single magistrate characterized by energy, dispatch and responsibility (Debates, June 1, p.46). He considered that the powers of

the executive were strictly those of executing the law and appointing officers with the exception of those who were to be appointed by the legislature under constitutional provision. He moved then to amend the Randolph plan promptly upon completion of Randolph's presentation. Wilson's rejection of the plural executive thus relied on his belief that it would undermine the principles of executive accountability and responsibility.

The Paterson plan constituted a second view on executive organization. Even though it retained the plural executive, this plan reaffirmed the Virginia Plan's emphasis on the executive as an organ completely separate from the legislature. In terms of administrative authority, the executive was to execute the federal acts, appoint all federal officers not otherwise provided by the Constitution, and direct all military operations. In essence, it embodied the principle of separation of powers.

Hence, it favored an independent administrative executive with control of military operations and appointments. The Virginia and Paterson plans therefore intended to preclude the exercise of both executive and legislative powers by the same branch.

Hamilton's conception of the executive was stronger than either those of Wilson or Paterson. His executive was

to have the sole appointment of the heads or chief officers of the departments of Finance, War, and Foreign Affairs. Hamilton's desire for a strong executive stemmed from his conviction that the country suffered under the Articles of Confederation from the lack of adequate executive power (Corwin, 1985). For this reason, he favored a centralized government without the weak executive that characterized many of the states of the time (Caldwell, 1988). In The Federalist he wrote, "The true test of a good government is its attempt and tendency to produce a good administration" (quoted in Rossiter, p.19).

In The Administrative Theories of Hamilton and Jefferson, Lynton K. Caldwell condensed Hamilton's views on executive organization into a few principles. These principles centered on the notion of strong executive centralization. Caldwell identified **energy** as a core principle in Hamilton's view of good government. In Federalist 70, Hamilton asserted, "Energy in the executive is a leading character in the definition of a good government" (Federalist Papers, p.423). In the same Federalist 70, he revealed his position in favor of an energetic executive by stating: "A feeble executive implies a feeble execution of the government. A feeble

execution is but another phrase for a bad execution..."(p.423).

Hamilton argued that four ingredients constituted the source of executive energy. **Unity** he believed to be conducive to energy. He concluded that unity in the executive was indispensable for energetic administration. A plural executive was a pernicious alternative for Hamilton. As he said in Federalist 70, "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any great number; and in proportion as the number is increased, these qualities will be diminished" (Federalist Papers, p.424). In this way, he connected with Wilson's argument that a strong executive should be a single magistrate characterized by energy.

Hamilton also considered **duration** as a necessary requisite for energy in the Executive. He contended that duration would provide the executive with personal firmness in the employment of his constitutional powers and ensure stability of the system of administration (Federalist 71). A brief tenure would condemn a magistrate to feebleness and irresolution in his administration. Duration, Hamilton said, "is necessary to give the officer himself the inclinations and the resolution to act his part well, and

to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits" (Federalist 72, Federalist Papers, p.436).

Besides unity and duration, Hamilton considered **competent power** as an important ingredient of energy. According to Caldwell, Hamilton considered that "only a powerful executive could be responsible for the promotion of great interests" (p.28). The importance of competent power, in Hamilton's view characterized as a qualified negative upon the acts and resolutions of the two houses of the legislature, resided in that "it furnishes an additional security against the enactment of improper laws. Caldwell includes the principle of **adequate provision for support** as closely related to competent powers. Support of executive authority was for Hamilton essential to safeguard the independence of the executive. As Hamilton contends, without proper attention to the principle of adequate support "the separation of the executive from the legislative department would be merely nominal and nugatory" (Federalist 73, Federalist Papers, p.441).

The last principle Caldwell identified as part of Hamilton's view on executive organization was

Responsibility. This principle was for Hamilton an essential ingredient for good administration. "While Hamilton desired a strong executive, he also desired one which was responsible," wrote White (1948). Executive responsibility was a requisite intended to encourage an energetic performance of duties and restrain usurping practices. Hamilton understood responsibility as "due dependence on the people", including accountability of administrators to the people through their representatives. In a republican sense, "due dependence on the people" and "due responsibility" were identified as the ingredients which constitute safety. This emphasis on dependence as "the safest guarantee of responsible conduct" (Caldwell, p.30) reflected Hamilton's belief that this "republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men" (Federalist 71, Federalist Papers, p. 432).

The Pinckney plan, the final proposal to organize the executive power, delineated the power of the president. In conceptualizing the President as the executive authority of

the United States, this proposal vested the executive power in the President, not in the Executive Branch. The Executive was entitled to take care that the laws of the United States be executed. He was also granted the authority to appoint executive officers in order to assure good administration.

The Pinckney plan portrayed the President as Chief Executive with power to assure efficiency and responsibility in the executive branch. As Thach noted, "the President can use his power to check upon the officers, keep them attentive to their duty, and may be the means in time not only of preventing and correcting errors, but also of detecting and punishing mal practice" (p.109).

It can be inferred that the Pinckney plan foresaw the duty of reorganization as executive and necessary whenever the existing organization precludes executive efficiency.

The opposition to the proposed plans provided an argument against unity, energy and independence as principles of executive organization. Sherman, even though he was not in opposition to a single executive, considered the executive magistracy nothing more than an institution for carrying the will of the Legislature into effect. This was a conception of a weak executive that was supported by other delegates. Randolph was against unity in the

executive, so he characterized it as the "foetus of monarchy." This reflected his fear of a too-powerful executive. Gorham rejected independence of the executive and his re-eligibility (Debates, p.46). It is clear that a fear of monarchy led the leaders of the opposition to strongly reject the propositions favoring a strong executive. Nevertheless, their arguments proved ineffective in precluding the establishment of the proposed executive.

It is important to note that the New York Constitution influenced these constitutional plans. In reference to our focus on executive authority over administration, this constitution stipulated: "It shall be the duty of the governor to inform the legislature at every session of the condition of the state so far as may concern his department; to recommend such matters to their consideration as shall appear to him to concern its good government; to transact all necessary business with the officers of government; to take care that the laws are faithfully executed to the best of his ability...(Thach, p.111). Therefore, this document represented an act to institute the executive's authority to recommend and effect changes in the administration in order to produce good government.

Article II of the finished Constitution reflects the influence of the Pinckney plan in its creation. The first sentence of this article states: "The Executive power shall be vested in a President of the United States of America". In section B, it says that the President "shall take care to the best of his ability that the laws be faithfully executed." This language, which implicitly reflects an emphasis on executive oversight, justifies the role of the President as Chief Executive of the executive branch.

Although the delegates engaged in a debate regarding how to organize the executive branch they were establishing, the Constitution they approved is largely silent regarding how the Executive Branch should be formed.

Provisions from the Morris-Pinckney Plan, submitted on August 20th, about organization of the executive departments were not included in the finished constitution because department organization was considered a legislative determination. Thus, the Constitution's ambiguous language on organizational matters tends to belie the framers' concern for principles of executive organization (Moe & Gilmore, 1995).

However, the fact that the Constitution is silent regarding executive structure does not mean that it was not

a concern for its creators. The constitutional clause that empowers the President to require written opinions from his subordinates evidences the founders' conception of the President as Chief Executive. A more important point is that the framers elevated the President's position of executive authority and initiative based on the formal character of the office. Above all, they acknowledged the capability of the President to ensure good administration by virtue of his independence, unity, energy, and responsibility. Good Government, in their view, was not only efficient government but also one responsive to the Constitution. In this sense, it was the president's role to use his independence to restrain informal influences that could represent a threat to constitutional government.

The Managerial Perspective

The managerial perspective, which is identified with the traditional American public administration theory of the early 20th century (known as the Classical Approach to Public Administration), reaffirmed the founders' concern for a strong executive with formal administrative authority. As Dwight Waldo (1985) asserted in The

Administrative State, one of the major themes addressed within the classical approach was centralization of executive authority.

Here I use the term executive authority to refer to centralization of substantial authority in the President as manager of the executive branch. This is different from the framers' conception of the role of the President as Chief Executive. While Chief Executive, in the framers' sense, refers to the highest officer of the executive branch with responsibility for its guidance and the faithful execution of the laws, Chief Executive, in the managerial sense, refers to a President who controls and manages the executive branch. Although executive authority under the managerial perspective embodies the Founders' view of centralization, unification, and integration of executive activities under the President, it includes a notion of policy initiative in the Executive Branch, legitimated by the President's electoral mandate.

The managerial perspective is a reflection of the classical emphasis on executive centralization. It aims at centralizing responsibility, strengthening the administrative role of the President through a strong hierarchical control within the executive branch, and integrating executive agencies in the name of efficiency.

Represented by what Bryan Fry (1989) identifies as the Departmentalists, the managerial perspective puts emphasis on executive authority by drawing attention towards administrative management and structure. It reflects a desire for enhancement of executive authority, which echoes the intention of the framers of establishing a strong executive. Like the founders' insight on executive authority, it is a normative view on executive organization.

The managerial perspective, "underlying the development of 20th century reorganization planning" (Arnold, 1986, p.4), emphasizes a managerial role for the President. It views comprehensive reorganization planning as a function of the Chief Executive. It places the executive branch under the authority of the Chief Executive and defines good administration in terms of presidential capacity to manage the executive branch. Thus, it carries the contention that, in order to be efficient, government must maintain a strong executive managerial capacity (Arnold, p.47).

In this section, I focus on the work of Luther Gulick as representative of the managerial perspective. His work on government structure is central to the argument advanced in this study. I use Gulick's work because of its

attention to structural reform and his prescription on consolidation, integration, and rationalization of executive activities as means to assure an efficient and effective administration.

What identifies Gulick with the managerial perspective is his strong emphasis on the enhancement of executive power within the executive branch. His theory of administrative reform prescribes unity and leadership as requisites for effective administration and advocates for a strong executive as necessary for the proper coordination of government agencies.

Unification of executive activities implies the development of mechanisms of coordination in the organization. Gulick elaborates on the structure of authority and shared ideas as two mechanisms of coordination. Control and leadership are vital elements of the structure of executive authority. Coordination through control requires a single overall directing executive authority, the provision of supervision for each job, and the determination of the unit tasks into which the overall job will have to be divided. Coordination through leadership requires unity of the executive.

Under the structure of authority, the Executive is assigned specific functions summed up in the acronym

POSDCORB. The letters of the acronym stand for the functions of Planning, Organizing, Staffing, Directing, Coordinating, Reporting, and Budgeting. This wide range of functions supports the role of the President as the manager of the executive branch. As Gulick (1937) writes, "In view of the fact that the job of the president as Chief Executive is POSDCORB, institutionalization must not be allowed to take any one of these functions out of his office" (p.14). This is a theory that limits Congress to approving the presidentially-controlled organization. Therefore, we can deduce that he considers reorganization planning to be an executive function that should not be performed by any other branch of government.

Coordination by ideas, the second mechanism of coordination, presupposes that reliance on coordination in organization, though necessary, is not sufficient to produce effective operation. A dominant central idea is the foundation of organization, action and self-coordination. As Gulick asserts, this mechanism is necessary for developing the desire and will to work together with a common purpose (p.37).

Gulick elaborated several principles of organization that reflect the essence of the managerial perspective. These principles centered on the creation of a strong

executive and the consolidation of agencies. More relevant to this study are the following:

- 1) All agencies should be consolidated into a few departments.
- 2) The power of the department head should be commensurate with his responsibility.
- 3) Responsibility for each function should be vested in a specific official.
- 4) All administrative work should be headed up under a single chief executive, who should be directly elected by, and responsible to, the voters or their representatives.
- 5) The chief executive should have the power to appoint and discharge department heads and to direct their work.
- 6) The chief executive should have a research staff to report on the work of the departments and search for improved methods of operations.

These principles were applied particularly in the President's Committee on Administrative Management in 1937, as we will see in the next chapter.

The managerial perspective carries a vision of an integrated executive. According to Gulick, integration is required to provide central coordination of "unit tasks"

defined by the division of work in the organization. In "Notes on the Theory of Organization," he identifies four bases into which the unit tasks of an organization can be grouped: 1) purpose, which groups tasks by the service provided; 2) process, under which tasks are grouped by the skill or technology employed; 3) clientele or material; and 4) place (p.21-25).

The managerial perspective, examined through the work of Luther Gulick, shows a normative emphasis on integration and executive leadership. Unlike the framers' view on executive authority, it portrays a President as manager of the executive branch and advocates for an absolute subordination of the executive branch to the President. Moreover, it seems to provide no methods by which to preclude an integrated executive branch headed by a powerful chief executive from resulting in tyrannical government.

Because of its departure from the Founders' conception of a Chief Executive, one can argue that the managerial perspective presents a view of the President as a popular leader. A Chief Executive comes to office with a popular mandate acquired as a result of election. This popular mandate can be translated into the presidential functions of meeting people's expectations and being responsive to

public opinion. In the managerial sense, these functions are expressed through the emphasis on management and control of the executive branch which, under the assumption that they would produce effective administration, are devices to respond to popular pressure. This constitutes a departure from the Founders' conception of a Chief Executive as responsible for the faithful execution of the laws, a power based on the formal character of the office and not on popular leadership.

The Legitimacy of the Administrative State

John Rohr (1985) offers a perspective on legitimating the Administrative State. This perspective elaborates on the framers' intention to create an energetic executive and the managerial perspective's emphasis on presidential supremacy. It reaffirms the former by broadening its implications and contests the latter's focus on presidential control. Given that in the 20th century, with the development of the managerial perspective, the President acquired a new role that both departs from the Founders' conception of a Chief Executive and adheres to the function of responsiveness to public opinion through

the exercise of management and control, the legitimacy perspective offers an avenue to return to the emphasis on adherence to constitutional principles as a way to ensure good government. I examine this perspective from two themes: 1) the notion of energy in the executive, and 2) the formal virtue of public officials.

Before discussing these two themes, let us present a definition of the Administrative State as viewed by the legitimacy perspective. The Administrative State is the Public Administration professionalized with substantial discretion in areas of decision making but subject to rule of law with the president as recognized Chief Executive. This definition includes two points that are important to understand the emphasis on legitimacy. One point is "substantial discretion in areas of decision making." This means that public officials have the constitutional right to address problems of administrative governance and influence the process of policy decision-making (Rohr, 1985). The second point is "subject to rule of law with the President as recognized Chief Executive." This implies that the Public Administration is subordinate to constitutional branches and is part of a hierarchical structure with the President at the top.

Legitimizing the administrative state is not an attempt to reject the subordinate nature of the public bureaucracy to the Chief Executive or Congress. It is an act to recognize that, by virtue of constitutional design, the Public Administration possesses an opportunity to serve a powerful political purpose that goes beyond simply implementing the expression of the public opinion by either constitutional superior. The Public Administration has, in the legitimacy perspective's sense, a right to participate in governance by adhering to constitutional principles. This means that public administrators (bureaucrats) do not necessarily have to do what the President or Congress tell them to do if it is at odds with the Constitution. Thus, the legitimacy perspective allows for the use of discretion by bureaucrats to favor those policies that are responsive to constitutional principles rather than to popular pressure.

The legitimacy perspective reaffirms the founders' vision of an energetic administration. It broadens the interpretation of the Hamiltonian concept of energy in the Executive. According to Rohr, the concept of "energetic administration" refers not only to a strong executive vested with energy and independence, but also to an administration entitled with formal right to assure good

government. It was "through sound administration", says Rohr, "that the loyalties of the people would gradually be transferred from the states to the federal government" (p.138). Thus, an energetic executive implies political value both in the president and the administration. As Rohr would reason, both the President and his administration are assigned a political task of higher order centered on ensuring efficient government.

The managerial perspective discussed in the previous section overlooks this dual emphasis on energy by drawing exclusive attention to justifying the President as controller of the bureaucracy. Through its single focus on presidential supremacy over administration, it takes a purely instrumental view of Public Administration. This instrumental view confines the Public Administration to a passive role of implementation of policies designed by elected officials. Hence, the managerial perspective prevents the public administrators from realizing what Rohr calls the "oath to uphold the Constitution" (p.50). To uphold the Constitution means, in Rohr's words, "to become the kind of persons who cherish constitutional norms and principles" (p.50).

The instrumental view of Public Administration resembles the separation of politics and administration

advocated by Frank Goodnow during the early 20th century. This dichotomy relies on the division of two government operations: 1) the expression of the will of the state, and 2) the execution of the will of the state. The rationale of this view is that the "people elect their representatives, who, acting in their sovereign capacity, pass laws which are duly carried out by the Public Administration" (Rohr, p.85). This separation presupposes the subordinate status of the administrative authorities to the legislature based on the superiority of expression over execution. Nevertheless, in perpetuating the instrumental view, the managerial perspective maintains a narrow interpretation of representation that excludes public administrators as constitutional actors from the process of governance.

The legitimacy perspective also recognizes the formal virtue of public officials that enables them to contribute to ensure good government. The founders' concern for the principle of efficient government justifies legitimating the administrative state on the basis of the formal virtue of public officials. That is, it recognizes that public officials have the constitutional right to act as safeguards against arbitrary power.

To recognize the formal virtue of public officials is "pregnant with a legitimating argument for the non-elected official to participate in rule" (Rohr, p.79). The basic point is that appointive officials, like members of Congress, derive their authority from the Constitution. The fact that members of Congress and the President are popularly elected does not make them the only representatives of the people. Public officials, although inferior to the President, "depend on the same authority source that has created the office of the President" (Rohr, p.80). Therefore, representation is not endemic only to elected officials. As Rohr states, the founders' emphasis on the character of representation relies on the act of pondering "the public spiritedness of bureaucrats, instead of simply fulminating about how to curtail and control them" (p.49).

The formal virtue of public officials also presupposes their liberty to choose among constitutional masters. Public Administrators, according to Rohr, have the duty to carry out the will of the people through the elected officials. His argument reflects the centrality of the separation of powers in the United States Constitution. Unlike the managerial perspective, he sees career officials as responsible to both Congress and the President. The

basic point is that both the President and Congress have legitimate claims as superiors of the bureaucracy -- not the President alone. Having two "bosses", however, leaves the bureaucracy (the Public Administration) free to choose in instances of disagreement between the President and Congress. This allows the bureaucrat to choose one constitutional superior on grounds other than the fact that he is elected. "If these grounds", writes Rohr, "are related to the constitutional principle of his oath of office, he could justify preferring one elected official to another on a democratic principle that is deeper than mere election" (p.84). Thus, the legitimacy perspective favors substantial discretion of public administrators to obey those policies they believe are responsive to the public interest and assure good government.

This chapter examined three perspectives on executive organization. The founders' perspective, reflecting an effort to cure the defects of the Articles of Confederation, centered on the establishment of a strong executive with formal authority over administration. The managerial perspective, reflecting a theory of effective organization, both reaffirmed this purpose by focusing on an enhanced presidential authority and departed from the Founders' conception of a Chief Executive. The legitimacy

perspective, seeking to justify the American governmental bureaucracy, came to broaden the founders' concern for an energetic executive and contest the managerial perspective's instrumental view of Public Administration. The next chapter turns to the practical application of the founders' and the managerial perspectives in the reorganization movement in the United States. The legitimacy perspective will be used in chapters 3 and 4 to examine how the reorganization of the Executive Branch of the Government of Puerto Rico adopted the managerial perspective's instrumental view of Public Administration.

CHAPTER II

MODERN EXECUTIVE REORGANIZATIONS IN THE UNITED STATES

Modern Executive reorganizations under the administrations of Presidents Roosevelt, Truman and Nixon embraced the task of enhancing the role of the President as Chief Executive. They constituted serious efforts to reorganize the executive branch centered on the nature of executive authority, on the centralization of the executive establishment, and on the appropriate techniques for ensuring sound administration and executive control.

These reorganizations were attempts to resolve the problem of an ill-equipped presidency unable to ensure sound management of the executive branch. They pointed to the gap between formal presidential authority to conduct the business of administration and the practice. Among the reorganizations here examined, there seemed to be a shared intention to concretize the founders' vision of a strong executive. Similarly, a practical application of the managerial perspective's emphasis on presidential supremacy over the executive branch, discussed in the previous chapter, is identifiable.

branch. From F.D. Roosevelt's perspective, the emphasis was grounded in combining the founders' concern for a strong executive with the managerial perspective's prescription of presidential control; this became, for New Deal reformers, the way to strengthen the Executive. With this precedent, the grounds of reorganization under the Truman Administration adopted a reaffirming style to address the question of enhancement of executive authority.

During the Nixon Administration, the objective of executive reorganization was to improve the President's capacity to manage and control the executive branch. In summary, these reorganizations proposed that a sound administration should be a representation of presidential supremacy.

The President's Committee on Administrative Management (1936-1937): Presidential Administrative Management

Though there were earlier reorganization efforts, President F.D. Roosevelt made the first comprehensive attempt to reorganize the executive branch. There were two conditions that led Roosevelt to consider reorganization. One condition was the growth of the US Government. The state of an economy in disarray led to the creation of

emergency agencies to deal with this problem. As a result, over a hundred agencies formally reported directly to the president. The acute problem, notes Emmerich (1971), was "how to manage the sprawling and brawling executive establishment and how to relate new and emergencies agencies to the regular departments" (p.48). This situation raised doubts abroad as to the ability of the United States system to provide effective leadership and solve the problem of modern government (Arnold, 1986).

The other condition was an ill-equipped presidency unable to effectively perform the administrative task of coordinating the increased number of agencies. The President lacked both staff assistance and the resources to exert managerial direction of the executive branch.

Roosevelt attempted to address these problems by bringing together agencies with overlapping policies. To achieve this goal, he considered two mechanisms. First, he created the Executive Council on July 11, 1933 through Executive Order 6202A. The Council was composed of the whole cabinet, the heads of the emergency agencies, and the budget director. This mechanism, however, failed to be an efficient instrument of policy coordination (Arnold, 1986).

President Roosevelt's second mechanism was the National Executive Council (NEC), created through Executive

Order 6433A issued on November 17, 1933. Unlike the Executive Council, the NEC was a smaller, more homogeneous and more centralized body. It included only the heads of the Agriculture, Commerce and Labor Departments rather than the whole cabinet, and the heads of the New Deal agencies. Nevertheless, this coordination effort failed to solve problems that arose between agencies.

On March 22, 1936, Roosevelt established the President's Committee on Administrative Management (The Brownlow Committee). This was a presidential commission to study the structure of the executive branch and to make recommendations as to how to manage it more effectively. As Emmerich observed, it was "to consider the problem of overall management of the entire executive establishment, including the relations of the new and emergency agencies to the regular departments" (p.49).

The President's Committee was composed of Louis Brownlow, chairman, Charles Merriam, and Luther Gulick. These three men were selected for their knowledge, background, and experience in executive reorganization at the state and local levels. Louis Brownlow's credentials included his work as Director of the Public Administration Clearing House and Chairman of the Committee on Public Administration of the Social Science Research Council at

the University of Chicago, wide experience in journalism and municipal government, and service as city manager in Petersburg, Virginia, and Knoxville, Tennessee (Karl, 114). Charles Merriam had worked as an adviser to mayors, governors and presidents, and also made contributions to both the theory and practice of government. Luther Gulick, who was identified with Administrative reform movements at the state and municipal levels, worked as Director of Research for the Commission on Inquiry on Public Service Personnel from 1933 to 1935, and President of the Institute of Public Administration in New York.

The President's Committee applied to its work the notion of presidential supremacy expressed in the managerial perspective. Centered on the issue of administrative management, the Committee considered the President as responsible for all of the national administration. Its underlying assumption, says Arnold, was "that managerial direction and control of all departments and agencies should be centered in the President" (p.104). The establishment of a responsible and effective chief executive as the center of energy and direction, in the Committee's view, was the requisite for an efficient administration. Hence, the members of the

committee paid almost exclusive attention to what they referred to as "making democracy work".

This phrase presupposed an emphasis on equipping the President with the tools for effective direction and supervision of the executive establishment. As the Committee Report stated, the President should be equipped with "better means of managerial direction, better personnel, better fiscal control, and better machinery for planning in order to carry out the national aim and programs...imposed upon our Executive by our Constitution" (Report of the President's Committee on Administrative Management, 1937, p.51-52).

The Committee presented five main proposals oriented toward executive strengthening and centralizing, general prescriptions of the managerial perspective. One proposal was to expand the White House staff to increase support to the President. The idea was to provide the president with a group of assistants with knowledge in administrative affairs. Another proposal was to strengthen and develop the managerial agencies of the government, including those dealing with budget, personnel, and planning. These agencies were to be the management arms of the President.

The Committee also proposed to extend the merit system upward, outward, and downward to cover all non-policy

determining posts, and to reorganize the Civil Service Commission under a single administrator. This recommendation followed the managerial perspective's principle that administrative work should be headed up under a single chief executive. Without granting personnel administration functions, this proposal would strengthen the Civil Service Commission by turning it into a Citizen Civil Service Board to serve as watchdog of the merit system.

In addition, the committee proposed to place the 100 independent agencies, administration, authorities, boards, and commissions under 12 major departments. The major proposed departments included State, Treasury, War, Justice, Post Office, Navy, Conservation, Agriculture, Commerce, Labor, Social Welfare, and Public Works. This proposal, reflecting Gulick's principle that all agencies should be consolidated into a few departments, put upon the President continuing responsibility for the maintenance of effective organization. A final proposal was to establish accountability of the Executive to Congress. The mechanism to accomplish this was an independent Auditor General responsible for post-audit of all fiscal transactions.

Clearly, these recommendations followed the managerial perspective's emphasis on the values of efficiency and

centralization of executive authority in the President. These values were to be promoted, observes Lowi (1985), by the centralization of the executive powers of the national government in the presidency. As the Report states,

...the canons of efficiency require the establishment of a responsible and effective chief executive as the center of energy, direction, and administrative management; the systematic organization of all activities in the hands of qualified personnel under the direction of the chief executive, and, to aid him in this, the establishment of appropriate managerial and staff agencies.

Thus, the interest in top-level management was the essential view that led the committee members to all its recommendations.

After the Committee Report was sent to Congress, Senator James F. Byrnes (SC) and Congressman Lindsay Warren (NC) took on the task of drafting the reorganization bill.

This bill was not exempt from congressional and media attacks. In Congress, Senator Byrd opposed the reorganization bill for political reasons. As Arnold noted, he was disappointed with the President's Committee for not including him among those who were briefed on the report. Senator Byrd later initiated a proposal to reorganize the executive branch through the Brookings Institution in Washington, D.C.

The strongest attack came from the press, which developed a campaign of distortion and intimidation. Influenced by anti-administration forces, the press claimed that the passage of the reorganization bill would create a dictatorship. As stated in one paper, "the president reorganization bill stems directly from the infamous Brownlow Report which frankly sought an executive dictatorship" (Emerich, p.56).

Despite the opposition to the original reorganization bill, Congress passed a Reorganization Act in 1939. This law, however, was enacted after two congressional sessions of failure and included only two of the recommendations of the Committee Report. These recommendations were: 1) continuing authority to the President to initiate reorganization plans; and 2) administrative assistants to the President. Roosevelt used this delegated authority to issue his reorganization plan No.1 of 1939 creating the Executive Office of the President and moving the Bureau of the Budget into it. He also issued Executive Order 8248 to establish the formal relationships between the Executive Office, the White House with its six assistants, the Bureau of the Budget and the remaining components of the expanded presidency (Arnold, 1985).

Despite repeated attacks and congressional failures, the President's Committee had several important accomplishments. The Committee affirmed the principle of broad presidential authority to initiate executive reorganization. This principle changed the practice by Congress of giving reorganization authority to the President only in times of war and economic crisis. It did not intend to increase the power of the President, but to strengthen his role as Chief Executive. As Fain (1987) states, it "advanced the proposition that reorganization was essentially an executive function" (p.xxx). In this way, Rohr (1985) notes, Congress' task was "to establish the departments and then graciously step aside while the President, in accordance with the principles of scientific management, assigns them their activities" (p.139).

The most important accomplishment was the Committee's formulation of a new concept of the administrative position of the Chief Executive. It elaborated a new notion of executive authority. The president became the centralizing force, providing continuous management of the executive branch. As Lowi (1985) says, Roosevelt put an end to a congressional-centered government.

This approach, rather than a reflection of the founders' value orientation, represented a direct

adaptation of the notion of a presidentially-controlled executive branch expressed in the managerial perspective. The subordinate nature of the administrative agencies entailed, in the Committee's sense, strict subordination to the President. In this way, administrative agencies became instruments of a powerful president.

This emphasis on presidential supremacy represented a departure from the founders' conception of the separation of powers. The President's Committee's interpretation of the separation of powers relied on stating that it "places in the President, and in the President alone, the whole executive power of the Government of the United States" (Brownlow report, p.31). This led the Committee to associate executive power with the president.

This view, however, overlooked the fact that, by virtue of constitutional design, the President shares executive powers with the department heads and Congress. Rohr explains this point by saying: "If the president is the government's chief executive officer, he cannot be at the same time its sole executive officer. Chief, as a hierarchical term, necessarily implies that subordinates possess to a lesser degree the power that is the chief's in the fullest, but not exclusive, sense" (p.40). Exclusive attention to control of subordinates by the President was

intended to justify presidential control over the executive branch. This showed an effort to make the executive the dominant branch.

The Commission on Organization of the Executive Branch of the Government (Hoover Commission): the enhancement of the President as manager of the Government.

After World War II, during the Truman Administration, there was a consensus as to the need to re-evaluate the state of the executive branch. In 1947, Congress established the Commission on the Organization of the Executive Branch of the Government (the Hoover Commission) to make recommendations with regard to how to organize the executive branch. This new attempt, says Emmerich, stemmed from the need "to bring into an integrated organization structure the numerous agencies left in the wake of war and demobilization (p.82).

President Truman signed the bill that created the Commission and suggested the appointment of ex-President Hoover as head of the Commission. He shared with Congress interest in considering the state of administration resulting from the accumulated New Deal, War, and post-war

programs. In 1953, Congress initiated a second Hoover Commission. But here, I examine only the first Commission because of its emphasis on structural reorganization of government agencies and concern with strengthening executive authority.

The Hoover Commission wrote nineteen reports. The one titled "General Management of the Executive Branch" is of special interest for our purposes. This report carried the philosophy of the Commission as to the organization of the executive branch. As Ronald Moe (1982) noted, the main assumption in this report was that a reorganization of the executive branch would give it simplicity of structure, unity of purpose, and clear lines of executive authority.

Throughout this report, the Commission sought to strengthen the authority of the President to reorganize the executive branch. Its general purpose was clearly stated:

"Establish a clear line of control from the President to those departments and agencies heads and from them to their subordinates with correlative responsibility from these officials to the President, cutting through the barriers which have in many cases made bureaus and agencies partially independent of the chief executive" (U.S. Commission on Organization of the Executive Branch of the Government, General Management of the Executive Branch,

Washington; 1949, p.7). This objective reaffirmed the Brownlow Committee's purpose of simplifying the bureaucratic structure of the Government. Likewise, it extended the intention of the founders to create a strong executive.

The report on General Management of the Executive Branch recognized the inability of the President to assure sound management. Its prescription centered around grouping agencies and departments based on major purposes.

The Commission found that the executive branch was not "organized into a workable number of major departments and agencies which the President can effectively direct..."

(The Hoover Commission Report, 1949, p.4). One recommendation was to give Department Secretaries full responsibility and authority for the conduct of their departments. There should also be delegation of decision-making in the areas of accounting, budgeting, recruiting and personnel management to the operating agencies.

Finally, it recommended staff support to department heads (Hoover Report, p.7). The Commission concluded that the various agencies be consolidated into about one-third of the present number.

The Commission introduced some changes in the Executive Office of the President created by President

Roosevelt. It recommended a new Office of Personnel to be headed by the chairman of the Civil Service Commission. It also recommended exemption of congressional approval for the heads of the Executive Office of the President.

Another change was the replacement of the Council of Economic Affairs by the Office of Economic Adviser to be directed by a single administrator. Finally, the Hoover Commission recommended enhancement of the authority of the President to initiate reorganization plans in order to effectuate changes in the government structure (Moe, 1982).

The application of the Gulick's principle of single administrator and executive leadership is unmistakable.

The other four recommendations were also intended to strengthen the ability of the President to manage the government more effectively. For instance, the section on Budget and Accountability proposed a closer relationship between the Bureau units and the White House. To deal with the problem of lack of central direction of activities in the Federal Government, the Commission proposed the establishment of the Office of General Services. This office was to be headed by an administrator responsible directly to the President. Within this section, the Department of Treasury was to become the "real fiscal center of the government" (Moe, p.38). To accomplish this

goal, the Commission proposed the transfer of agencies and functions related to fiscal management (such as the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, and the Export-Import Bank) to the Department.

The Hoover Commission, like the Brownlow Committee, strengthened the presidency. Its major contribution was the enhancement of the position of the President as manager of the government. It also enhanced the position of the chairman of the Civil Service Commission and facilitated presidential accountability through the transfer of agencies to major departments. The approach was similar to that of the Brownlow Committee: "It stressed accountability" (Nathan, 1983, p.4).

The Ash Council (1969-1971) : the Administrative Presidency

The emphasis on executive authority and centralization continued during the Nixon Administration. The purpose of the On April 8, 1969, President Nixon established the President's Advisory Council on Executive Organization, known as the Ash Council. The council was to develop a comprehensive executive branch reorganization proposal that would improve the President's capacity to manage the executive branch, and meet service demands placed upon government (Nathan, 1983). In the words of Nixon: "...I have concluded that a sweeping reorganization of the Executive Branch of the government is needed to keep up with the times and with the needs of the people" (qtd. in Fain, 1987, p.5).

This proposition reflects Nixon's concern for administrative responsiveness to the particular demands of the political and environmental context in which his administration worked and to the special demands of the citizens. In a broader sense, the initial intention of Nixon's reorganization initiative was to provide a government responsive to the people.

The Ash Council presented an assumption similar to that of the Brownlow Committee and the Hoover Commission. The common premise was that the executive branch had become too fragmented due to the proliferation of programs and agencies. To address this problem of fragmentation, the Council's prescription was reduction of agencies to a small number of departments, which would create more centralized lines of authority within the executive branch. This approach presupposed the creation of broader functional departments and expected to enhance the value of efficiency in the management of the federal Government. In this way, the Ash Council employed the traditional public administration approach to reorganize the executive branch used by the Brownlow Committee and the Hoover Commission.

The reorganization proposed by the Ash Council included three major changes. First, it would retain four executive departments in being: State, Treasury, Defense, and Justice. Second, it would abolish seven existing departments: Agriculture, Interior, Commerce, Transportation, Labor, Health, Education and Welfare, and Housing and Urban development. Third, there would be four new executive departments: Human Resources, Community Development, Natural resources, and Economic Affairs. Each

department would be headed by a Secretary assisted by a staff.

Nixon based his reorganization on the notion that the government was organized around methods and subjects rather than purposes and goals. He considered the lack of unity in each department the cause of ineffectiveness in government.

The basic assumption was that organizing a department with a given set of purposes to be achieved would assure accountability of that department. "The new departments," wrote Fain (1987), "would have important new functions, expanded missions, streamlined authorities, and strengthened internal organization and management" (p.16).

Thus, consolidation of agencies under major departments based on the functional nature of that agency was the adopted approach. The adoption of the principle of grouping by task prescribed by Gulick is identifiable in Nixon's reorganization.

The Ash Council's recommendations with regard to the structure of the government were not only intended to facilitate an effective management of the federal Government, they also followed the strongest emphasis of both the normative doctrine of the founders and the prescriptive approach of the managerial perspective: to enhance executive authority. The executive departments

"were to be directly responsible to the President, thereby assuring a more direct and efficient line of command between the President and Cabinet members" (Fain, p.4).

Summary

The reorganization efforts examined in this chapter addressed the inherited problem of a president unable to manage effectively the executive branch. To deal with this problem, they each pursued a common goal: to strengthen the managerial role of the president as Chief Executive. The mechanisms used were consolidation of agencies into few departments, integration of units of similar functional nature, and direction of administrative work by a single chief executive. Thus, these comprehensive attempts to reorganize the executive branch presented a concrete application of the normative approaches provided by the founders' and the managerial perspectives. The practical application of these perspectives in the Reorganization of the Executive Branch of the Government of Puerto Rico is what the next chapter turns to.

CHAPTER III

FOUNDING THE ADMINISTRATIVE STATE IN PUERTO RICO

This chapter examines the first comprehensive reorganization of the executive branch of the Government of Puerto Rico. This reorganization was initiated in 1949 by Luis Munoz-Marin, the first popularly elected Governor of Puerto Rico. Through the work of the Commission on Reorganization of the Executive Branch (the Rowe Commission), Munoz-Marin came to fix a defect in the system of separation of powers formally established by the Jones Act in 1917. The result was of great importance to the development of the administrative and political systems in Puerto Rico.

The Rowe Commission institutionalized an administrative state with centralization of substantial authority in the Governor as chief executive, reflective of the executive model prevalent in the United States. I would argue that the theoretical underpinnings that guided the creation of the American strong executive with authority over administration shaped the evolution of a modern, strong executive in Puerto Rico, as well. Particularly, the reorganization of the executive branch

recommended by the Rowe Commission followed strictly the principles of organization, prescribed by the managerial perspective, which guided the reorganization of the executive branch proposed by the President's Committee on Administrative Management (The Brownlow Committee). A direct application of the managerial perspective led the Rowe Commission to accommodate an instrumental view of public administration and, as a result, create a basis for the illegitimacy of the administrative state.

Historical Antecedents

During the United States occupation of Puerto Rico from 1898 until 1949, the executive in Puerto Rico was weak, legislative-dependent, and the embodiment of political illegitimacy. During the first half of the 20th century, the executive acquired a non-representative nature in the eyes of the Puerto Ricans, for he was a North American appointed by the President of the United States. Although legally granted administrative authority, in practice he had limited influence over administration.

This weak and illegitimate nature of the executive in Puerto Rico originated in two organic acts passed by the United States Congress. In 1900, Congress approved the Foraker Act, the first Organic Act of Puerto Rico. This

law stipulated that the President should appoint the Governor of Puerto Rico to serve for a period of four years, with the consent and approval of the United States Senate. The cabinet would be composed of six members: a secretary, a procurador general, a commissioner of the interior, a treasurer, and a general auditor. These officials were appointed by the President with the consent and approval of the Senate.

The Governor appointed by the President was a North American and citizen of the United States. The citizens of Puerto Rico received no consultation and usually no warning regarding the appointment of an outsider as Governor of Puerto Rico. As Goodsell (1975) observed, the appointed outsider "was a foreigner in every sense of the word; he thought differently, acted differently, and spoke another language" (p.34). Like the Federal Executive, the Governor of Puerto Rico was granted the formal authority to appoint offices, veto legislation, execute laws, and be the chief commander of the militia (Ramos de Santiago, 1965).

The Foraker Act also created a bicameral legislature. The upper legislative chamber was named the Executive Council, composed of the six cabinet members and five other members appointed by the President. The act specified that five members of the Executive Council had to be natives of

Puerto Rico. The lower legislative chamber was to be comprised of 35 members elected popularly by the people of Puerto Rico every two years.

The lack of executive authority was the result of fragmented administrative responsibility. The Executive Council, by provision of the Foraker Act, acted as a council body to the governor with substantial oversight over administration. This constituted a legislative obstacle for the governor's attempts to exert greater influence over the executive branch. The Foraker Act, in this way, departed from the doctrine of separation of powers. Although it established a bicameral legislative assembly, it failed to prevent one branch from becoming the dominant one by giving the Executive Council both legislative functions as the upper legislative chamber and executive functions as a council body sharing administrative supervision with the governor.

Puerto Ricans considered the executive branch as illegitimate since it was constituted mainly by North Americans. Puerto Ricans had limited representation in the Executive Council. This was the result, says Santana-Rabell (1993), of a policy of exclusion of Puerto Ricans from administrative affairs.

The second organic act was the Jones Act, approved by Congress on March 2, 1917. This legislation seemed to offer a solution to the lack of executive authority over administration. Formally establishing the separation of powers, it eradicated the legislative power of the Executive Council and created a Senate to be elected popularly by the people of Puerto Rico. It also granted the Governor the power to appoint the members of the Executive Council, with the exception of the general procurador and the Commissioner of Education, with the consent and approval of the United States Senate. The Executive Council, hence, became a mere council of the governor (Ramos de Santiago, 1965). The council members were assigned certain administrative duties; however, the Act did not change the appointive nature of the Governor. The President continued to appoint a North American as Governor of Puerto Rico. Since he was sent directly from the mainland, the appointed governor had little or no knowledge of the political, social and cultural demands of Puerto Rico (Wells, 1969).

We can say that the Jones Act perpetuated the political illegitimacy of the executive created by the Foraker Act. The executive was not only unrepresentative of the interests of the citizens of Puerto Rico, but was

also controlled by the President of the United States. As Santana-Rabell states, "The Governor appointed to administer the colony of Puerto Rico was a North American who was inept, prepotent, and uninterested in solving the country's problems" (p.49). In addition, the establishment of the popularly-elected Senate strengthened the representative character of the legislature. The main result was a basis for legislative supremacy over administration.

Legislative Supremacy Over Administration

Like the executive in the United States before the ratification of the Federal Constitution, the Governorship in Puerto Rico was subordinate to the legislature. The figure of the governor was weak. The insular legislature, composed only of Puerto Ricans, exerted a pervasive control over the executive branch (Goodsell, 1975).

The problem of a weak Puerto Rican executive stemmed from the dichotomy between formal administrative authority and its practice. The Jones Act attempted to strengthen the administrative authority of the governor by recognizing him as "the supreme executive power". Through the

separation of powers, it granted the governor the authority to appoint all the departments heads and request them to submit reports directly to him. Thus, says Goodsell, "The Jones Act fortified the Governorship" (p.33).

Nevertheless, executive authority over administration was in reality limited. The governor's statutory control of the executive branch was mainly a theory. As Tugwell, who was Governor of Puerto Rico from 1941 to 1946, stated:

"The Governor of Puerto Rico could not move in any possible direction, and, if he could, he had not the wherewithal to do it wisely". He further contended that "nowhere in the civilized world at the present time, perhaps, is there an executive with so little power" (quoted in Goodsell, p.34).

The subordinate position of the executive can be understood by looking at pervasive legislative encroachment on the executive branch. Two facts support the contention that there was legislative supremacy over administration. One is that the fully elective nature of the legislature gave local politicians ample opportunity to legitimately use their political influence. They were, after all, considered by the people as their only representatives.

A more important factor was that the legislature controlled the administration through enacting statutes,

passing appropriations, conducting investigations, and confirming gubernatorial appointments (Goodsell, 1975) Clearly, the Governor did not have power commensurate with the formal character of his position. Although the Jones Act vested the executive power in the Governor, it was merely a formal grant of power that in fact failed to prevent legislative encroachment. Let us examine two mechanisms through which the legislature dominated the administration.

Confirmation of appointments was the mechanism mostly used by the legislature to control the bureaucracy. The common practice in Puerto Rico was "to withhold confirmation unless the nominee was approved in advance by the majority party of the upper chamber" (Goodsell, p.37).

This practice later became known as **terna**, which consisted of a list of three names submitted to the governor by the leaders of the majority party in the legislature for open positions requiring confirmation. The list included only members of the majority party or followers.

The terna forced the governor to select among the three candidates; otherwise, no confirmation would be forthcoming. This practice was successful in guaranteeing legislative encroachment, for the candidates "owed their loyalty to the legislative leadership and not to the

governor, and thus the majority party had effective control of all agencies they headed" (Goodsell, p.38).

The governor's ability to manage the executive branch was also undermined by the establishment of multi-member boards or commissions. This approach diminished the governor's supervisory capabilities since, as Goodsell notes, an agency headed by a board is more difficult for the chief executive to control than one headed by a single administrator. Indeed, the commissions practiced no accountability either to the governor or the department heads (Santana-Rabell, 1993) In being completely accountable to the legislature, these agencies enjoyed no administrative discretion by virtue of the statute that created them. According to Santana-Rabell, the statutes were written in such a way that they prevented flexibility in the use of administrative discretion. This condition created the need for strengthening the authority of the executive with regard to administration.

The Elective Governor

In the early nineteen-forties, a new cooperative enterprise to heighten the administrative authority of the executive was created. Governor Tugwell and Luis Munoz-

Marin (President of the Senate at that time) initiated a movement that advocated for an elective Governor. Unlike previous Governors, Tugwell, who was the last imported Governor of Puerto Rico, was familiar with Puerto Rican politics. His appointment as Governor from 1941 to 1946 was the result of his experience as an administrator in national and municipal government, his work as a White House confidant in drafting key New Deal measures to rehabilitate the economy, and his tenure as Secretary of Agriculture during the F.D. Roosevelt Administration. Through personal visits to Puerto Rico to examine agricultural conditions, he became associated with the island's political problems. Moreover, his experience at high levels of administration, says Goddsell, helped him to acquire an understanding of the role of the chief executive in a system of separation of powers. Luis Munoz-Marin's rise to political leadership was the product of a combination of academic and political work. On the academic side, he developed a strong background in journalism and law while pursuing college and legal studies at Georgetown University, as well as taking journalism courses in Columbia University. He wrote for The Nation, The New Republic, and the Baltimore Sun, and edited La Democracia, his father's newspaper, through which he

published his initial writings on governmental and social reforms. On the political side, he acted as secretary to his father who was Commissioner Resident of Puerto Rico in Washington, D.C. While working in Washington, he both received a background in American politics and solidified his understanding of the political conditions in Puerto Rico. In 1932, after returning from Washington, Munoz was elected senator-at-large as a member of the Liberal Party.

His strong interest in politics led him to form his own political organization, the Popular Democratic Party, which in the 1940 elections won ten of the nineteen seats in the Insular Senate. That year, he became the President of the Senate, a position of substantial influence in Puerto Rican politics.

The Tugwell-Munoz enterprise set the basis for the establishment of the administrative state with the governor as the chief executive. Two steps oriented toward this goal were the control of administration through the elimination of the terna device of dictating gubernatorial appointments, and the institutionalization of the Office of the Governor to provide the governor with staff assistance in supervising the bureaucracy.

These accomplishments, however, were not enough to enhance the administrative authority of the governor.

Tugwell was convinced that popular election was the necessary condition for the governor of Puerto Rico to exert effective control over the administration. It can be said that Tugwell's experience with an elective executive in the United States led him to consider the same democratic procedure for the executive in Puerto Rico. But this was a reform that required a congressional amendment to the Jones Act, which was the statutory source of the executive power in Puerto Rico.

Aware of this congressional requirement, Tugwell stated in 1943: "It is my belief that there will not be one until the Jones Act is rewritten to prescribe as one of the Governor's qualifications that he must be a citizen of Puerto Rico as well as of the United States and that he must be elected by the other citizens of the Island" (quoted in Goodsell, p.55-56). This communication expressed Tugwell's belief that Puerto Ricans, in a democratic system, should be given the right to elect their own leaders. He sent President Roosevelt a proposal for an elective governorship. The results of this communication were a presidential message to Congress on March 9, 1943 calling for an amendment to the Jones Act to permit an elective governor and the creation of the President's

Advisory Committee to make further legislative recommendations.

The President's Advisory Committee, which included Tugwell and Munoz as members, favored strengthening the administrative authority of the elected governor. The basic assumption was that an elective governor would have effective control over administration. This assumption rested on the belief that the illegitimate character of the executive, a product of its appointive nature, undermined its ability to exert influence over administration. To fulfill this goal, the committee presented to Congress a bill providing for an administratively strong governor. Nevertheless, the Territories and Insular Affairs Committee in the United States Senate amended the bill, eliminating the concept of a powerful chief executive in Puerto Rico (Goodsell, 1975). Eventually, the bill did not pass the House Committee on Insular Affairs.

The elective-governor movement did not die after its Congressional failure in 1943. President Truman in 1946, after Tugwell's resignation from the position of Governor, appointed Jesus T. Pinero, a citizen of Puerto Rico, as Governor of Puerto Rico. This presidential appointment constituted a step toward the eradication of the political illegitimacy of the executive in Puerto Rico. But more

important is that in 1947 Congress amended the Jones Act of 1917 to convert the appointive governorship into an elective position. The main result was the popular election of Luis Munoz Marin as Governor of Puerto Rico in 1948.

The importance of the elective governor legislation resided in that it catalyzed the growth of the governorship. Luis Munoz Marin came to reduce the gap between the formal administrative authority of the governor and its practice. Although Tugwell initiated the efforts to reduce this gap, Munoz successfully institutionalized a strong governorship through his comprehensive reorganization of the executive branch.

The Reorganization Act of 1949

Munoz believed that the weakness of the executive was its inability to initiate administrative reforms as an executive function. Enhancement of executive priority over administration, in his view, required a Chief Executive with authority to exercise this function. Acknowledging that experience has shown the Legislature cannot itself successfully deal with the problem of modernizing and improving the organization of the Executive Branch, he said

in a press conference: "The attempts by the Legislature to reorganize the Executive Branch through detailed and specific legislation...have never been fruitful" (El Mundo, March 25, 1949, p.1).

Munoz then became an embodiment of the ideal of a strong executive with administrative responsibility for the executive branch. He initiated the era of modernization of the executive branch in Puerto Rico and, more significantly, created a new relationship between the governorship and administration.

On March 26, 1949, Munoz submitted a project to the Legislature that recognized reorganization of the executive branch as an executive function. Stressing the need for collaboration between the Executive and the Legislature, the project advocated for leaving the initiative to reorganize the executive branch to the Executive. This effort embodied Munoz's use of political persuasion to convince the Legislature of the necessity of delegating reorganization power to the Executive. Munoz used the expression "mutual trust" to refer to the relationship between the Executive and the Legislature to assure the acceptance of his reorganization bill and prevent major procedural conflicts with the Legislature. He further called this relationship necessary to strengthen the

"democratic basis of our political system...making it efficient in the formulation and execution of programs" (El Mundo, March 18, 1949, p.1). The result was a precedent of real importance. The Legislature promptly approved the bill as Reorganization Act 140, delegating responsibility to the Executive to organize and ensure administrative efficiency in the executive branch.

The Reorganization Act, approved on April 28, 1949, represented the Legislature's acceptance of reorganization of the Executive Branch as an executive function. It granted the governor the power to examine and from time to time reexamine the organization of all the executive agencies and departments of the government and to determine all changes necessary to promote the better execution of the laws, and to assure the more effective management of its departments and agencies through coordination and consolidation (Reorganization Act 140, article 3). It also provided for the establishment of a commission to examine the executive branch and make recommendations, stipulating that reorganization plans were to be submitted to the Legislature at the beginning of a session and would take effect the day following the adjournment unless disapproved by both Houses by concurrent resolution. (Reorganization Act, article 5).

The Rowe Commission

On June 9, 1949, Governor Luis Munoz Marin, under the provisions of the Reorganization Act of 1949, appointed a Commission for Reorganization of the Executive Branch of the Government of Puerto Rico, composed of seven members. In his own words, the members of the commission were "citizens with ample experience in problems of administration" (El Mundo, February 18, 1949, p.1). Three members were North Americans: James H. Rowe, who was the chairman and had experience in government reorganization at the federal level, Louis Brownlow, who presided over the President's Committee on Administrative Management (The Brownlow Committee) under the administration of President Roosevelt, and Arnold Miles, Director of the Research Division of the United States Bureau of the Budget. The Puerto Rican members were Rafael Pico, President of the Planning Board, Manuel A. Perez, Director of the Office of Personnel, Enrique Cordova Diaz, member of the Statehood Party, and the Senators Luis Negrón Lopez and Benjamin Ortiz. The commission became known as the Rowe Commission.

The commission's assignment was limited to problems in the organization of the executive branch. In a letter sent to all members, Munoz defined their role as to "make

possible the fulfillment of a long and widely-felt need for improvement in the operation of the Government" (June 9, 1949, p.2). He also advised them of the problem of a tremendous growth in the size and complexity of the operations of the Puerto Rican administrative system. This problem, said Munoz, caused confused lines of authority and responsibility and unsatisfactory responsibility and accountability of the departments and agencies to the Chief Executive.

To give exclusive attention to these administrative management problems was the commission's task. The commission was to "restrict itself to the organization and management of the executive branch, avoiding questions of policy..." (Report of the Rowe Commission, 1949, p.5). As Munoz-Amato has observed, "it was not authorized to alter the public policy, just to look for better means for its execution" (quoted in Dimock, 1951, p.29). Thus, its main purpose was to study and evaluate the executive branch in order to find for "the People of Puerto Rico better methods for the more efficient and economical performance of the things they wish their government to do for them" (Report, p.3).

The Commission's language on gubernatorial supremacy reflects an adherence to both the framers' and the

managerial perspective. The creation of the following norms that guided the commission's work echoed the framers' orientation toward a strong executive (Report, p. 3-4):

1. The chief executive should be equipped with authority adequate to match constitutional responsibility, and with sufficient staff support to do those things which he must do.
2. The subordinate officer of the executive branch should be accountable to the chief executive and, through the chief executive, to the legislature and to the people.
3. The responsibilities of the subordinates of the chief executive should be properly located and directly fixed.
4. The various organization units should be grouped by major purpose so as to minimize conflict, duplication, and overlapping.
5. Each activity of the government should be administered through the form of organization best suited to achieve its stated objectives.
6. Good organization should include adequate provision for planning, coordination and control.
7. Special provision should be made for continuing attention to efficiency and economy.

8. The Executive Branch as a whole should be so organized as to manage with maximum effectiveness its relations with other branches of the insular government and with the Federal Government.

Although these norms presuppose a strong Chief Executive as envisioned by the Founders, unification of the executive power under the managerial control of the chief executive as prescribed by the managerial perspective is unmistakable. The governor came to play a central role in managing the administrative institutions. Thus, the governor's role as manager of the executive branch provided a departure from the Founders' conception of a Chief Executive under which the executive of Puerto Rico was formally established. The emphasis shifted from faithful execution of the laws to control and management of the executive branch. In departing from the original conception, the Governor became a more popular figure rather than a formal one. This is inherent in the Rowe Commission's implicit reference to responsiveness to public opinion. As it states, the Governor's task is "to manage effectively and economically the administrative machinery of the government, and reflect the aspirations of the people of Puerto Rico" (Report, p.3).

This reflects the idea that the Governorship through executive reorganization has been redesigned to be more popular than formal. This means that the Governor is more concerned with meeting people's expectations, which he interprets as a mandate acquired from direct popular election. The strong emphasis on control and management is intended to fulfill this popular mandate.

The Rowe Commission generated several recommendations intended to enhance the position of the governor as Chief Executive and to strengthen his capacity to manage the executive branch effectively. The most important of these considered the grouping of agencies and purposes. The commission recommended that agencies, programs and functions be re-grouped, consolidated, reduced or eliminated to solve the problems of administrative rationality of the executive branch. It recommended reduction in the total number of agencies to 23, abolishing 29 separate organizations, transferring 24 more into departments or agencies, and eliminating 6 other boards of directors and 2 governing boards. Furthermore, it recommended transferring of the Planning Board and the Office of Personnel into the Office of the Governor.

The Commission also put emphasis on increasing staff support for the Governor, for they believed that the

Governor needed staff support to manage the executive branch. Here is a reflection of the Brownlow Committee's famous sentence: "The President needs help". The staffing recommendations were divided into staff to the Governor and staff to the Governorship. Recommendations as to Staff to the Governor included creating a new post of Executive Assistant for liaison with the departments and agencies and organizing an ex-officio Council of Economic Advisers and an Administrative Assistant for Economic and Social Programming. As to Staff to the Governorship, the Commission recommended organizing an Administrative Management Division in the Bureau of the Budget to assist the Governor in dealing with problems of organization and administration as they arise. In addition, it recommended removing from the Office of the Governor the Office of Transportation and the Office of Investigations of Unlawful Games.

The logic behind the Commission's recommendations rested on notions of strong popular leadership and centralized executive power. "Popular" refers to the source of authority and leadership in public opinion. The commission's concern with responsiveness to the public's expectations suggests an informal institutionalization of gubernatorial leadership in public opinion rather than a

formal institutionalization in constitutional character. In organizing agencies hierarchically by purpose, the Commission supported the conception of the Governor as the embodiment of authority over administration. Its call for single-headed agencies to promote executive efficiency was a reflection of both the framers' concern for unity and energy in the executive and the managerial perspective's principle that all agencies should be headed by a single executive. Thus, these organizational recommendations were devices to strengthen the position of the Governor as manager of the executive branch. Like the Brownlow Committee's recommendations, The Rowe Commission's recommendations were intended to strengthen top-level management and institutionalize the doctrine of inseparability of good administration and strong executive leadership.

The Rowe Commission represented the high point of development of the Puerto Rican Administrative State. It established a structure that resembled the organizational model prevalent in the United States. The primary feature was a hierarchical structure with centralization of substantial authority in the Governor as the Chief Executive, who coordinates and controls the entire executive establishment. The departments and agencies were

organized by major function, and each became headed by a single administrator with strict accountability to the Governor. The administrative state thus embodied the Hamiltonian doctrine of a strong executive. Equally, its establishment was based on the principles of unity of command and control prescribed by the managerial perspective.

To understand the success of the reorganization agenda initiated by the Rowe Commission, it is necessary to understand the political context within which it sought realization. The reforms proposed faced no opposition in the legislature since 10 of the 11 reorganization plans submitted by Governor Munoz were approved (De Jesus in Dimock, 1952). This was the effect, observes Benjamin Ortiz (1952), of "a complete harmony between the Executive Branch and the Legislature in the name of greater administrative efficiency and the establishment of an authentic democracy in Puerto Rico" (p.112). A more important factor, says Wells (1969), was the leadership of Munoz Marin as well as his ability and popularity among the leaders of the majority party in the legislature. His years as President of the Senate helped him establish a strong base of support. Above all, the legitimacy that Munoz brought to the Governorship, based on the elective

nature of his position, contributed to the success of his administrative reforms.

Luis Munoz Marin was the first elected governor who met the criteria of an administrative state as defined by the Rowe Commission. The Rowe Commission was his instrument to found an administrative state with a strong executive. He deserves the title of founder of the Puerto Rican Administrative State. Through the work of the Rowe Commission, his reforms introduced a state of improvement of the administrative mechanism in Puerto Rico and started the development of a managerial governorship. Although Munoz brought political legitimacy to the Puerto Rican Governorship, the Commission he appointed to reorganize the executive branch developed a rhetoric that contributed to creating a weak legitimacy in the resulting administrative state.

The Rhetoric of the Rowe Report

The Rowe Report provides a rhetoric similar to that of the Brownlow Report. The point of connection resides in the Rowe Report's adoption of the distinction between policy and administration. This dichotomy, as discussed in the first chapter of this study, sharply separates two

government operations: 1) the expression of the will of the state, and 2) the execution of the will of the state. The Rowe Report defines the task of the executive as "faithfully executing the will of the people through the effective administration of the public business" (p.20). Although this fortifies the position of the governor as manager of the Executive Branch, it consummates the ideological separation between policy and administration. Like the Brownlow Report, the Rowe Report supports this view by describing every executive activity as "executive management"--Planning management, Fiscal management, Revenue Administration and Treasury management, and Personnel management (p.21).

There was in the Rowe Report a second rhetorical emphasis that points to the illegitimacy of the administrative state. The report was effective in establishing a strict accountability to the Governor by the appointive officials. Acknowledging the subordinate position of the administrative institutions to the elective governor, the report states, "The paramount purpose of general systems of management by the Governor is that he may extend his management downward throughout the Executive Branch and be better able to hold all the subordinate units strictly accountable to him for the proper performance of

their duties (p.21). But this emphasis on strict accountability overlooks an important point. As Rohr (1985) contends, the administrative institutions are also subordinate to the legislature because execution is ultimately subordinate to expression. Thus, the administrative agencies have more than one constitutional superior to whom they must respond.

In introducing the strict accountability to the executive, the Rowe Report not only supported the policy/administration dichotomy but also accommodated an instrumental view of Public Administration. The Public Administration was to be an instrument of the executive and was intended to be apolitical. Appointed officials were to be accountable to the executive for "clearly defined and fixed responsibilities, for which the Governor is in turn responsible to the Legislative Assembly and to the people" (Rowe Report, p.141). This is a language that put sovereignty in the Governor and not in the people. Through institutionalizing this instrumental view, the Rowe Report interpreted the notion of representation as endemic only to elected officials. As Rohr would say, it ignored "the fact that some offices are filled by election and others by appointment says nothing about the connection between the people and the occupant of a particular office" (p.80).

Both elective and appointive officers derive their authority from the same source, the Constitution. Thus, the rhetoric of the Rowe Report overlooked the fact that appointive officials, because of constitutional design, possess a formal virtue that enables them to act, in case of disagreement between their constitutional superiors, as a safeguard against arbitrary power.

This approach of strict accountability to the Governor represented a direct application of the notion of an executive branch controlled by the Chief Executive, expressed in the managerial perspective. With this emphasis on executive supremacy, the Rowe Report departed from the doctrine of the separation of powers. The Report's intention to place in the Governor the whole executive power led itself to associate executive power with the Governor. This view, as Rohr would say, overlooks that the Governor, by constitutional design, shares executive powers with the department heads and Legislature.

Therefore, the Report's exclusive attention to control of subordinates by the Governor attempted to justify executive supremacy over the executive branch.

It is clear that the Rowe Commission called for a break in legislative control over administration. Its main contribution was the formulation of a new concept of the

administrative position of the Governor. Resting on the assumption that the interests of good administration and the Governor's interests were identical, it led to a "modern" position on gubernatorial authority over administration. Therefore, we can attribute to the Rowe Commission the initiation of modern comprehensive reorganization agenda in Puerto Rico.

The founding of the Administrative State in Puerto Rico was a reflection of the theoretical underpinnings that guided the evolution of the American Administrative State.

The governor's administrative capacity was a priority for the members of the Rowe Commission. Like the Brownlow Committee, the Rowe Commission connected its work to the needs of the Chief Executive. The Rowe Report was Federalist in its prescription of a rigorous and united executive. However, its understanding of sound administration as strict accountability of appointive officials to the Governor and its conception of representation as a quality only of elective officials created a basis for a weak legitimacy of the administrative state. The next chapter turns to the application of these theoretical underpinnings to the most recent reorganization of the Executive Branch in Puerto Rico and examines the

continuity of the problem of legitimacy of the
administrative state.

CHAPTER IV

EXECUTIVE REORGANIZATION UNDER GOVERNOR ROSELLO

This chapter examines the most recent reorganization of the executive branch of the Government of Puerto Rico, initiated by Governor Rosello in 1993. Although attempted 44 years after the first executive reorganization in 1949, it shows an approach to organization similar to that employed in the Rowe Report. The managerial perspective, which advocates a managerial role for the chief executive based on control and strict accountability, was influential in the development of this reorganization proposal. In adopting this perspective's dominant principles of organizations, just as the Rowe Commission did, this reorganization perpetuates the instrumental view of public administration implied in the managerial perspective.

A Brief view of executive reorganizations from 1968 to 1993

The need for reorganization of the Executive Branch of the Government of Puerto Rico has been the subject of various commissions during the second half of the 20th century. Santana-Rabell (1993) identifies five

reorganizations since the Rowe Commission in 1949. A detailed examination of these reorganizations is not within the scope of this study. Nevertheless, their common emphasis on a strengthened executive is worth examining.

Under the provisions of the Reorganization Act of 1968, Governor Luis A. Ferre established the Commission on Reorganization of the Executive Branch. Unlike the Rowe Commission, this commission did not attempt a comprehensive reorganization of the executive establishment. It limited its work to seeking administrative rationality through coordination and integration of functions and agencies. It focused on the mechanisms of consolidation, restructuring and transfer of agencies into major departments as a means to facilitating the superintendence of the executive branch.

In 1976, during the Hernandez-Colon Administration, the legislature approved a new reorganization act that superseded the previous one. The importance of this legislation to our purposes is that it centralized the powers of reorganization completely in the Governor and limited the role of the legislature to merely instrumental (Santana-Rabell). Governor Hernandez-Colon, under the provisions of the reorganization act, appointed a new Commission for Reorganization of the Executive Branch. The

most important objective of this commission was to improve the instruments and mechanisms of coordination, supervision and control of the executive branch by the Governor. One of its guiding norms was to provide the Governor with managerial techniques for the planning, integration, supervision and evaluation of administrative activities within the executive branch. Thus, this reorganization, reasons Santana-Rabell, returned to the emphasis on centralization of executive authority expressed in the Rowe Report.

With the election of Romero-Barcelo as new Governor of Puerto Rico in 1977, the Reorganization Act of 1976 was amended to create a new Commission on Reorganization. The purpose of this commission was to study and evaluate the integration, composition, functions, and procedures of the executive branch, and make the necessary recommendations to effectuate an integral organization. Its main mission was to produce an organizational structure with centralization of substantial authority in the Governor. The assumption, states Santana-Rabell, was that the disarticulate growth of the Executive Branch has undermined the capacity of the governor to supervise, coordinate and control the multiplicity of government organizations. Therefore, it recommended the reduction of the number of executive

departments to 14 in order to facilitate the supervision and coordination of the executive branch by the Governor.

After the Commission of Reorganization of 1981, two other attempts to reorganize the executive branch were initiated by private sector organizations. In 1985, the Subcommittee on Reorganization of the Government of the Committee for the Economic Development of Puerto Rico, Inc., presented its Study of the Organization and Function of the Executive Branch of the Government of Puerto Rico. The paramount purpose was to study the organization of the government and propose strategies for the modernization and improvement of the government structure. Unlike the previous reorganization efforts, it proposed the improvement of the quality of management and administrative personnel, revision of the current systems, methods and administrative procedures, and strengthening of middle management as the best way to enhance the capacity of the Governor to guide and control the executive branch.

The second reorganization attempt by a private sector organization was directed by the Committee on Efficiency and Decentralization of the Governmental Activity, a subcommittee of the Commerce Chamber of Puerto Rico. Its report proposed the reduction of the size of the government, elimination of excessive management and

administrative positions, and dispersion of governmental activity to the rural areas. According to the committee, the complexity of the government organization makes it practically impossible for the chief executive to guide and supervise directly the extensive and diverse gamut of government entities that hierarchically respond directly to the Office of the Governor (qtd. in Santana-Rabell, p.150).

This effort, however, had no impact on the reorganization of the executive branch. The failure of private sector organizations to effect any changes to the structure and organization of the executive branch turned the initiative of executive reorganization back to the Governor.

Reorganization Act of 1993

Like previous Governors, Governor Rosello incorporated reorganization planning as a tool for increasing his managerial control of the executive branch. In the platform of the New Progressive Party (NPP), called the Leadership of Ideas, he described reorganization planning as an activity "to transform the role of the government as one 'paternalistic' and provider to one 'facilitator'..."(p.10). The platform presented six main strategies of his reorganization: 1) to create 16

umbrella departments in which agencies, programs and offices of similar functional natures will be grouped; 2) to transfer functions to the private sector; 3) to refocus priorities in public budgeting and reduce public cost; 4) to decentralize governmental activities that limit initiative on the private sector and preclude economic development; and 6) to strengthen the control of the government over public corporations and their processes of development of policies (Political Platform, p.11). In this way, the political platform set the arena for Governor Rosello's initiative in proposing a new reorganization act that would grant him powers to reorganize the executive branch.

On January 12, 1993, Governor Rosello sent to the Legislature the initial project on reorganization requesting delegation of power to restructure the government. After being referred to the Senate, the majority approved it as the Project of the Senate no. 4. This project promised a comprehensive administrative reform of the government based on the integration, elimination and consolidation of executive agencies and departments under major umbrella departments (Nuevo Dia, January 7, 1993). Governor Rosello acknowledged that, as of January 1993, the executive branch was comprised of 54 public corporations,

51 executive agencies, 8 departments created by law, 11 offices in the Office of the Governor, and 14 support offices in the Fortaleza (the Governor's House). The reorganization project proposed to reduce the support agencies to nine and the offices in the Office of the Governor to five, consolidate 51 government agencies to 42, and integrate the 56 public corporations to 47. This arrangement of umbrella departments, said the Governor, "will provide flexibility, better communication and coordination in the implementation of public policies to the benefit of the people" (Nuevo Dia, August 22, 1993). Thus, an excessive growth of the government justified the Rosello Administration's case for reorganization.

To understand the fate of this bill, it is important to look at the controversy that arose. Unlike the Reorganization Bill Governor Munoz-Marin submitted to the Legislature in 1949, the Project of the Senate no. 4 faced strong criticism. The fact that the proposal was reviewed by a NPP-controlled legislature accelerated its approval, without a careful examination of its implications.

The passage of this project stimulated strong criticism from diverse social and political sectors. One can contend, as Diclerico (1979) would say, that the Executive will face opposition every time he attempts a

reorganization of the Government through the transfer, abolition, or consolidation of government agencies. As he says, "reorganizations can not avoid the political context in which they are attempted" (p. 123). Nevertheless, under Munoz-Marin the attempt to reorganize the executive branch faced no opposition. The need of a strong executive after years of legislative encroachment, besides the popularity of Munoz-Marin among party members, justified the reorganization initiative.

The criticism pointed to the constitutional implications of the Project of the Senate no. 4. The main claim was that the approved reorganization proposal threatened the system of separation of powers. The basic point was not that the legislation granted the Governor ample authority to create, consolidate and abolish agencies and departments, but that it contained provisions that precluded the Legislature from amending the project or the reorganization plans, and required explanation for legislative rejection, if this were the action taken (Nuevo Dia, February 1, 1993, p.5). The assumption behind this proposed legislative approval process was that it would bring flexibility to the whole reorganization initiative.

Other criticisms emphasized that the project lacked dispositions to protect the job of employees of the

agencies to be consolidated, transferred or abolished, and that the project did not include a three-party commission composed of experts in public administration (Nuevo Dia, January 12, 1993). These criticisms led the presidents of the Senate and the House of Representatives, Roberto Rexach Benitez and Zaida Hernandez, respectively, to review the proposed project and present a Substitute to the P. of S. no. 4. Eventually, this substitute became the Reorganization Act of 1993.

To restore the confidence of the diverse social and political sectors, the Reorganization Act introduced several changes. A difference with the Reorganization Act of 1949 is that it created a Legislative Joint Commission on the Reorganization Plans of the Executive Reorganization, to be composed by nine senators and nine representatives of which no less than three should be from the minority. Instead of studying the organization of the Executive Branch and making recommendations, the role of the commission was to conduct a preliminary analysis of the reorganization plans submitted by the Governor. It was also to hold public hearings in order to adopt a report for submission to the Senate and the House of Representatives.

The Reorganization Act also stipulated that within five days from the submission of each plan, the legislative bodies would meet as a Committee of the Whole, separately, to analyze the reorganization plans before them, as well as the Report of the Joint Commission on the same plan. In these sessions, there would be amendments to the plan by either House; and, if approved by the Committee of the Whole of each House, it would be sent to the Joint Commission which would render a final report to be submitted for a vote in each legislative body. Within seven days of receiving the amended plan, the Joint Commission would adopt a final report that would be submitted to the House and Senate for its approval by roll call and without any amendments. Once approved by both bodies, the plan would be sent to the Governor for his review and signature or veto. Nevertheless, argues Santana-Rabell, although this procedure tends to safeguard the constitutional balance and allows for participation by the minority in the Legislature, it fails to include other sectors of the community.

Another change was the exclusion of the public corporations from the structural reform. This means, states Santana-Rabell, that "the most powerful, complex and

important sector of the public administration will not be included in the process of reorganization" (p. 157).

One element of similarity between the Reorganization Act of 1993 and the Reorganization Act of 1949 is the emphasis on efficiency, responsiveness, and executive leadership. This reflects a continuity in the application of the managerial prescription of executive leadership as a principle of executive organization.

The notion of executive leadership is provided in Article 3 of the Reorganization Act. This article assigns the governor the responsibility of assessing the organization of the executive branch and determining the changes necessary for a good government. In section 4, the Act enables the Governor, through the creation of reorganization plans, to transfer, create, abolish, and consolidate totally or partially agencies of the executive branch. Thus, the Reorganization Act vests in the Governor the role of Chief Executive and defines reorganization planning as an executive function.

Scope of the Reorganization

Under the provisions of the Reorganization Act, Governor Rosello took initiative over the reorganization of the executive branch. The proposed reorganization focused on how to reform the structure. He submitted 11 reorganization plans to the Legislature, which provided the scope and purpose of the reorganization. As in the Rowe Commission, these plans responded to the premise that, in order to attain government efficiency and sound management, the executive branch should be reduced to a small number of departments. Here lies an application of Gulick's principle that all agencies should be consolidated under a single chief executive. The purpose of the plans was quite similar to that of the plans under the reorganization of 1949: to increase the effectiveness of the management of government programs and agencies.

The reorganization plans embody the traditional approach of umbrella departments. As Governor Rosello says, under each umbrella department will be grouped multiple agencies with similar characteristics (Nuevo Dia, August 2, 1993). This approach advocates for the consolidation of administrative agencies with similar functional natures

under the same major department. The rationale of this approach, says Fain (1987), is that each department will have important new functions, expanded missions, streamlined authorities, and strengthened internal organization and management.

The composition of the new departments, briefly described below, evidences the reorganization's adoption of the traditional-managerial emphasis on executive centralization.

Commission of Public Security and Protection

In addition to absorbing the Department of Police, the Fire Department and the central Agency of Civil Defense of Puerto Rico, the Commission of Public Security and Protection would acquire important components from Health and Natural resources. From Health it would transfer the Auxiliary Secretariat of Medical Emergencies (including its budget, personnel, resources and equipment) to the Fire Department. From Natural resources it would transfer the Planning Program for Mitigating Natural Risks. The Commission on Public Security and Protection will be headed by a Commissioner to be appointed by the Governor among the Chief of the Fire Department, the Director of the Central Agency of Civil Defense, and the Superintendent of the Police Department. Each will be directly responsible to the Commissioner (Reorganization Plan no. 1; Executive Order-1994-56).

Department of Justice

The Department of Justice would receive the Institute of Forensic Sciences to provide technical and scientific support in carrying out criminal investigations. It would abolish the Board of Directors of the Institute and transfer its functions to the Secretary of Justice. The Department of Justice would also transfer to the Department of State the Real State Examination Board, including its

resources and personnel. In addition, it would include the following components: Board of Forfeitures, the offices of the Assistant Secretary for Human Resources, Administration, Registration of Property, Family and Children Affairs, Crime, Comptroller Affairs, Dispute, Counsel, and Attorney General; the Bureau of Special Investigations, the Executive Board SIJC, the Commission of Civil Rights, and the System of Information on Criminal Justice. Each of these agencies would directly responsible to the Secretary of Justice (Reorganization Plan no. 2; Nuevo Dia, September 12, 1993).

Department of Correction and Rehabilitation

The Department of Correction and Rehabilitation absorbs the Correctional Penal System, created in 1988, Juvenile Institutions and the Corporation of Training Businesses. The Directors of these agencies will be directly responsible to the Secretary of Rehabilitation and Correction (Reorganization Plan no.3, approved, December 3, 1993).

Department of Natural and Environmental Resources

The Department of Natural and Environmental Resources will be composed of six main agencies: thg Administration of Natural Resources, which includes all existing programs of the Department of Natural Resources and integrates the Office of the Commissioner on Navigation, the Board of Guards of Natural Resources of Puerto Rico; the Department of Solid Waste (the Board of Directors is abolished and its functions transferred to the Secretary); the Administration of Energy Affairs; the Advisory Council on Energy, and the Advisory Council on Natural and Environmental Resources (Reorganization Plan no. 4, approved December 9, 1993).

Department of Agriculture

The Department of Agriculture will be composed of the following agencies: the Administration for Farming Services and Development of Puerto Rico (created by Article 5 of Reorganization Plan no. 5); transfer the Administration of Agrarian Development; the Authority of Soil; the Corporation of Agricultural Insurance; and the Corporation for Rural Development. These components will respond directly to the Secretary of Agriculture (Reorganization Plan no. 5).

Department of labor and Human Resources

The Department of Labor and Human Resources would be organized around the following main agencies: the Administration of Labor Rights, Board of Volunteers to the Service of Puerto Rico, the Board on Minimum Wage, and the existing programs of the Department. The activities performed by these public organisms will be coordinated by the Secretary of Labor and Human Resources (Reorganization Plan no. 6, approved, May 4, 1994).

Department of Citizens' Rights

The Department of Citizens' Rights would absorb components from the Office of the Governor. Transfers include the Commission of Women's Affairs, the Office of Youth Affairs, the Office of People with Disabilities Affairs and the Office of the Attorney for Veteran Affairs. These agencies will be subordinate to the Secretary of Citizens' Rights in the development of public policy and coordination of operations (Reorganization Plan no.7, approved, February, 1994; Executive Order-1994-23; Executive Order-1994-12).

Department of Finance

The Department of Finance continues as the Office of the Commissioner of Financial Institutions and the Office of the Commissioner of Insurance. Transfers include the powers, personnel, equipment, records, and budget of the Office of the Inspector of Cooperatives to the Office of Commissioner of Financial Institutions; the Office of the Inspector of Cooperatives and its functions not related to the savings, credit and insurance Cooperatives to the Administration of Cooperative Development; the Corporation of Insurance to Actions and Deposits of the Cooperative of Saving and Credit; the Administration of the Equine Industry and Sport; and the Office of Industrial Tax Exemption (Reorganization Plan no. 8, approved, June 2, 1994).

Department of Economic Development and Commerce

The Department of Economic Development and Commerce would absorb the following departments and agencies: the Department of Tourism, the Administration of Commercial Development (functions related to the establishment and development of small businesses, and promotion of foreign

commerce and exports), the Administration of Economic Development, the Corporation of the Development of the Movie Industry of Puerto Rico, the Administration of the Equine Industry and Sport. In addition, it would create the Committee on Economic Development to be composed of the Secretary and the Chiefs of the different agencies. The Directors of these agencies will be directly responsible to the Secretary (Reorganization Plan no.9, approved, June 22, 1994).

Department of Family

In addition to absorbing the Department of Social Services, created in 1968, the Department of Family integrates the following agencies: the Administration of Family and Children, the Administration of Social-Economic Development and the Administration of Vocational Rehabilitation. Transfers include the Office of Child Services and Criminal Development (SENDES) to the Administration of Families and Children, the Loiza Institute for Blind Children and Youth, and the Program of Shoe Distribution to the Department of Education (Reorganization Plan no. 11, approved, March 23, 1995; Nuevo Dia, April 1, 1995; Nuevo Dia, April 6, 1994).

The reorganization plans summarized above reflect themes that were present in the Rowe Report. Recurrent themes include that the reduction of the number of agencies, organization of departments around broad goals, and grouping of administrative agencies with related functional natures together in one major department. The basic assumption is that this arrangement would preclude interagency competition and integrate functions effectively.

Through the reorganization plans, the proposed reorganization unmistakably employs the managerial

perspective's prescription of organization by consolidation. It adopted the assumption that effective organizational design is assured by consolidating agencies with similar functions under the same major department. But the important point is that this approach is not innovative since it reflects the same approach applied by the President's Committee on Administrative Management, which based the organizational structure of the executive branch of the Government of the United States on the process involved or the type of work to be performed.

With organization by consolidation, the reorganization proposed by Governor Rosello anticipated the benefit of less confusion and duplication when related programs are placed in two or more agencies. For example, in the case of the proposed Department of Finance, it was determined that the Office of Tax Exemption and the Administration of Equine Industry and Sport would not be placed under this department because of incompatibility with the functions and goals of the Department of Finance (Nuevo Dia, May 27, 1994). It can be inferred that through the mechanism of consolidation of agencies of similar functional natures under one major department, the proposed reorganization aimed at strengthening the capacity of the Governor to

manage the multiple programs carried out by the executive branch.

The interest in consolidating agencies by functional nature responded to the interest in enhancing executive accountability through a strengthened top-level management structure based on the traditional principle of one single executive for each department and a sole chief executive. In this way, the variety of programs that were administered by several agencies became under the control of the Governor. This reflected the tendency toward the creation of an integrated executive, as prescribed by the managerial perspective.

The rationale of the proposed reorganization by consolidation is that the Government should be organized according to each department's major goal (basic mission).

Similarity in functional nature is the controlling criterion. The implication is not necessarily that the department would be big in size; the size would depend on the broad mission and the consolidated number of agencies.

For example, the Department of Citizens' Rights is given the broad mission of protecting the rights and interests of a certain sectors, such as women, veterans, handicapped, and youth. Although each agency attends to a different clientele, they were accorded the same purpose.

This shows a connection with President Nixon's reorganization proposal in 1971. As Alan L. Dean (1981) has stated, "President Nixon attempted to restructure the executive branch along major purpose lines when he proposed the abolition of seven domestic departments and their regrouping into four departments concerned with community development, human resources, natural resources, and economic affairs" (p.136). Nixon's executive reorganization emphasized reassembling the executive branch on the bases of similarity of functions. In a presidential message to Congress, he presented this approach to organization: "The key to a new understanding is the concept that the executive branch of the Government should be organized around basic goals" (quoted in Fain, 1987, p.15).

Through the reorganization plans the proposed reorganization was also justified in terms of efficiency in the discharge of public services and decentralization of executive activities. As stated in the Reorganization Act of 1993, one of the objectives of the reorganization is "to improve the level of effectiveness and efficiency of the government" (p.1). Governor Rosello envisioned decentralization of executive activities by delegating authority to the Secretaries and charging them with larger

complex functions as a result of the consolidation of agencies. This managerial approach carried the assumption that strengthening departmental management would produce a more systematic and coherent administration. Nevertheless, decentralization might not always produce the expected results. As Fain asserted, "Experience suggests that there are many pitfalls in the path to effective decentralization. Without field officers who are properly selected, well-trained, thoroughly conversant with departmental affairs, and prepared to assert their delegated authority in full measure, decentralization may not mean much" (p.22).

It is important to note that this reorganization is not immune to contradictions. One contradiction arises from the fact that the size of the government is increasing despite the stated purpose of reducing its size. This is confirmed by Representative Anibal Acevedo, who conducted an analysis of the proposals to consolidate government agencies under major departments. He argued that the Office of the Governor has grown between 1993 and 1995. On the one hand, states Acevedo, the Governor proposes to transfer certain agencies located in the Office of the Governor to the new Department of Citizens' Rights. On the other hand, he creates three new offices: the Office of

Communications, the Secretariat of Organization and Governmental Politics, and the Secretariat of Strategic development (Nuevo Dia, February 21, 1995). Santana-Rabell agrees with Acevedo in stating that the Umbrella Departments create an additional hierarchical level since the agencies transferred to these departments keep their own boss. This is a contradiction with the intention of reducing the bureaucratic structure. The basic implication is that comprehensive accountability of government agencies is, as Wilson (1989) states, impossible in any enduring way. What is possible is to make them alert to the administration's preferences by placing loyal and competent subordinates in charge of making decisions. This lead us to consider the effect of this reorganization on the legitimacy of the administrative state.

The Rosello reorganization did not attempt to identify or address the problem of illegitimacy of the administrative state. There was a clear intention to institutionalize an absolute subordination of the public bureaucracy to the Governor. According to the Director of the Office of Management and Budget, the main purpose of the reorganization was "to focus on the integration and design of a structure within the executive branch which

would create new departments directly responsible to the governor" (Nuevo Dia, August 2, 1993).

This statement provides continuity to the emphasis on strict accountability by administrative agencies to the Governor expressed in the Rowe Report. The structural arrangement it presupposes is proposed in the name of efficiency. This, however, reflects an exclusive focus on the relation of management to the organization of administrative institutions and the role of the Governor as manager. The managerial perspective's proposition of executive supremacy over administration and its consequence of an instrumental character of the public administration is thus identifiable in this reorganization.

The proposed reorganization, with its emphasis on consolidation, anticipates a greater executive oversight over the executive branch. This view reflects the managerial doctrine embodied in the Rowe Report that presupposes an inseparability of good administration and executive leadership. The reorganization reaffirms the Rowe Report's emphasis on establishing a strong executive with substantial authority over the executive branch and responsibility for administrative management. Therefore, the reorganization not only enhances the position of the

Governor as Chief Executive, but also perpetuates his role as manager of the executive branch.

CHAPTER V

CONCLUSIONS

The emergence of the notion of a strong executive in Puerto Rico is based on a direct association with two theoretical arguments that embody the view of executive leadership of both the Founders and the managerial perspective. These theories, and their practical application in the context of the United States, guided the development of a strong executive in Puerto Rico. The Hamiltonian chief executive characterized by unity and energy was the vision of the Founders. The innovative aspect of the Puerto Rican executive was to combine this vision with the practical experience in the United States with a weak executive in order to legitimize a strong executive. The managerial perspective contributed the idea that governmental efficiency depended on the centralization of substantial authority in the chief executive as center of direction and administrative management.

The direct application of these theoretical perspectives to the effort to reorganize the executive branch of the Government of Puerto Rico in 1949 contributed to this effort's success in bringing significant change to the island's political and administrative systems. On the political side, the Governor became the embodiment of

political legitimacy¹ and executive leadership. The central point here is that this application healed a long-lasting defect in the systems of separation of powers established by the Jones Act in 1917. It put an end to legislative dominance over administration. As a result, the Executive acquired a balance with the legislature with regard to his relation with the public bureaucracy. Considering the nature of the subordination of the executive branch to the legislature before 1949 in Puerto Rico, Governor Munoz-Marin was right in initiating a comprehensive reorganization to strengthen the role of the Governor as Chief Executive.

Besides their political impact, these theoretical perspectives oriented the evolution of the administrative state in Puerto Rico. The emphasis on strict executive centralization dominated the organization of administrative institutions. The main feature, product of the managerial perspective, was a strictly hierarchical structure of authority with the Governor at the top. A level of accountability to the Governor, and not only to the

¹ The term political legitimacy, in this sense, refers to the significant change in the selection of the Governor of Puerto Rico from presidential appointment to popular election. As stated before, the Governorship in Puerto Rico was the embodiment of political illegitimacy since the executive was a North American, appointed by the President with the consent and approval of the Senate, unrepresentative of the interests and concerns of the people of Puerto Rico. Hence, the political legitimacy of the Governorship in Puerto Rico originated in the popular election of the Governor.

legislature, was instituted. This arrangement followed the thrust that strict centralization and a narrow span of control would give direction and ensure accountability within the executive branch.

Although both the Founders' and the managerial perspective's emphasis on executive organization were applied to the practice of reorganization planning in Puerto Rico, the managerial perspective was more influential in determining the character of the Governor as Chief Executive. Reorganization planning under Governor Munoz-Marin subsumed the modern, managerial presidency perspective with its strong emphasis on the chief executive's administrative supremacy. Thus, this perspective was an integral part of the development of the concept of an enhanced managerial governorship.

The Rowe Commission, in this regard, indicated the importance of this perspective as a discourse which is explicitly concerned with executive leadership. The Commission called for an exclusive gubernatorial control of executive reorganization and argued for the unification of the executive power under the managerial control of the Governor as strategies to achieve executive supremacy in Puerto Rico. This expressed an adoption of the Brownlow Committee's emphasis on the necessity for a strong managerial executive, which led to an expansion of the

expectations of gubernatorial responsibility to include the management of the administrative agencies.

This emphasis on gubernatorial management was reaffirmed in the reorganization of the executive branch initiated by Governor Rosello in 1993. Although the Rosello Administration did not produce a report, its reorganization plans served as the documentary source for the continuity of the emphasis on executive centralization.

The critical analysis of these reorganizations relied on the fact that while the Rowe Commission created the problem of illegitimacy of the administrative state², the Rosello reorganization perpetuated it. The Rowe Report set a basis for the illegitimacy of the administrative state based on strict accountability of government agencies to the Governor. This was a considerable consequence of the application of the managerial perspective to the case of reorganization of the executive branch. In adopting this perspective's dominant principles of organization, the report incorporated into the Puerto Rican administrative system the instrumental view of Public Administration. One can argue that the members of the Rowe commission were aware of this implication. The fact that Louis Brownlow and James

² The term illegitimacy with regard to the administrative state refers to the view, grounded on orthodox bases, that administrative agencies are instruments of a strengthened executive rather than institutions of government.

H. Rowe, two advocates of the managerial perspective, had considerable influence in the work of the commission supports the contention that the Rowe Commission's intention was precisely to make the public bureaucracy subject to absolute subordination to the Governor as Chief Executive.

The Rosello reorganization, like previous reorganizations, makes no effort to identify this problem of illegitimacy and offers no solution. In fact, it justifies strict subordination of administrative agencies to executive authority in the Governor, through the establishment of the umbrella departments with direct accountability to the Governor. Thus, the Rosello reorganization, while enhancing the managerial role of the Governor, contributes to develop, as in the case of the Rowe Commission, an illegitimacy of the administrative institutions that confines these institutions to mere instruments of passive implementation or execution of the laws.

I believe that a managerial governorship is appropriate for the effective coordination of executive agencies. It gives the Governor greater opportunity to establish managerial cohesion within the executive branch and ensure the faithful execution of the laws. However, its emphasis on control and strict subordination of administrative agencies to the chief executive ignores the political nature of the Public Administration. The exercise of absolute

control of executive activities is not consistent with democratic values since it hinders the formal virtue of public administrators to contribute to governance. The managerial perspective carries a language that delegitimizes the administrative state in terms of reducing its role to an instrument of a strengthened executive. The experience of executive reorganization in Puerto Rico, based on the principles of organization prescribed by the managerial perspective, has accorded the public administration this instrumental character.

The history of executive reorganizations in Puerto Rico does not speak of administrative agencies as institutions of government. Administrative agencies have been considered, in great measure, instruments of the Chief Executive. In both the Rowe Report and the reorganization plans of the Rosello Administration resides a discourse that puts exclusive attention on the role of management in executive organization and not on the role of public administration in governance. Focusing on how to organize the executive agencies so that they become more responsible and directly accountable to the Governor, this discourse has ignored the importance of the doctrine of an energetic administration in the execution of the laws. This is the importance that the Founders accorded to administration. This ignorance

produces a lack of sense of legitimacy of the role effective administration plays in governance.

The executive branch in Puerto Rico should entail an innovative dimension that introduces a new political and administrative discourse in which the Public Administration is viewed as a collaborative partner in the process of governance. Here I follow the normative emphasis of the legitimacy perspective, which recognizes the Public Administration as an institution of government rather than an instrument of the Chief Executive.

To introduce a new discourse that will enhance the role of public administration in governance will start the tendency to legitimate the administrative state in Puerto Rico. The first step is to produce a shift in the prevalent discourse in order to emphasize the function of administrative agencies as government institutions rather than to put exclusive attention on their organization. This will produce a change in the character of public administration in Puerto Rico.

When I say to legitimize the administrative state, I do not mean to abandon the traditional emphasis on gubernatorial leadership in administration. What I mean by legitimating the administrative state is to recognize, on constitutional grounds, the role of public administration in governance. This is to acknowledge the distinctive nature

of public administration. As Wamsley et al. state, "The distinctive nature of the Public Administration lies in the fact that it is part of the governance process, that it is in a political context and competence directed toward the public interest" (p. 39). This acknowledgement implies a re-conceptualization of government agencies as instruments of action in pursuit of the public interest.

This emphasis on legitimacy does not attempt to change the subordinate status of the Public Administration. As Rohr (1985) asserts, "The Public Administration neither constitutes nor heads any branch of government, but is subordinate to all three of them" (p.182). "In dealing with its constitutionally derived ambiguity and discretion", says Wamsley et al., "the Public Administration must always act within the constraints imposed by its origin in covenant, a covenant manifested in the Constitution..." (p.45).

A second step is to recognize the importance of the formal virtue of public administrators as actors in the process of governance. This virtue presupposes that public administrators have a right to choose among constitutional superiors when disagreements in policy arise. This means that they may have to be responsive to the Governor at one point, to the Legislature at another, or to the courts at other times. The central point is that public administrators "should certainly use their discretion to

favor those policies that they think are likely to promote the public interest" (Rohr, p. 183), and not only those expressed by the Governor. This will enable them to view the authority of their own institutions as legitimate. More importantly, it is to recognize that in the virtue of public officials resides an opportunity to shape events, so that government becomes more responsive to the people's will embedded in the constitution rather than to immediate pressures.

A third step to form the new discourse is to adopt the concept of public interest as the appropriate normative basis for public administrators. Pendleton Herring defines this concept as "the standard that guides the administrator in executing the law" (quoted in Goodsell, 1993). In executing the laws, public administrators should use their discretion to discover the public interest in the midst of conflicting demands and clashing interests. This is, as Wamsley et al. state, "to play the long-term public interest rather than the most immediate and powerful pressures" (p.48). In essence, legitimating the administrative state is vesting in it the ultimate responsibility to be responsive to the constitutional order and the democratic governance process.

The analysis of the Founders', the managerial, and legitimacy perspectives helps us understand the practice of

reorganization planning in Puerto Rico and its contributions in creating a strong executive. But this analysis also indicates that, in order to address the issue of illegitimacy of the administrative state, we have to turn to the emphasis of the legitimacy perspective. This promises a new discourse that will accord the public administration in Puerto Rico not only a distinctive character but also its place in the democratic governance process.

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