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THE EXECUTIVE AS EDUCATOR:

Reflections on Public Leadership and Governmental Reorganization

Robert McClintock

People are troubled by the state of the federal government. It is large, inefficient, unresponsive, burdened by scandal, an alien presence, they seem to feel. In all probability, these feelings will before long trigger a reorganization of the executive branch, among other things. It was tried by Richard Nixon and has been promised by Jimmy Carter. The situation is indeed ripe for such an effort, for the federal bureaucracies are labyrinthine in the extreme: they could be made more manageable, that is an intuitive conviction of all.

Yet, contemplating this prospect, one might be troubled by the American penchant for promulgating plans without unduly pondering principles. In all that has been said about governmental reorganization, little has been said about the principles on which such a reorganization should be based. The present organization of the executive branch has accreted as the public and its leaders have reacted expediently to successive problems and possibilities, to successive crises, and it almost seems as if we will embark upon governmental reorganization in the same manner, waiting until a crisis situation seems to demand it, and then adopting whatever plan seems most workable in the emergency.

Crises there will always be, and the argument here is not against reacting to them. Rather it is a plea that the reaction be thoughtful, principled, one based on a common consideration of fundamentals. We have in our history one great example of the capacity to think together about fundamentals in the midst of crisis, namely the era in which the American Revolution and Constitution were wrought. The founding fathers were continually under immense pressure of events, yet despite that, they devoted sustained effort to the reflective discussion of principles, of the principles that should inform a sound system of government. That example should be the standard for public

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discussions leading up to any possible reorganization of the executive branch.

There is not only nostalgia, but prudence as well, in heeding such a standard. Real opportunities to reorganize major parts of the government arise rarely. They should not be treated lightly, especially the present one, for should it fail to deal effectively with the real causes that occasion it, the consequences might be profoundly detrimental to the American experiment. The movement toward governmental reorganization has begun to be a popular movement because people feel a deep dissatisfaction about the way the executive branch is functioning, about the way the whole federal government functions. Many seem to feel a cynicism in response to a cynicism they perceive in government; they seem to feel that the governmental apparatus works no longer, if it ever did, and that most of what is done through it is pomp and circumstance designed to hide the ineffectuality of the system and the people running it. If the system is faulty, judgments of intent and competence become meaningless and it ceases to matter who governs. In such a mood, people favor governmental reorganization, one aimed at creating an effectual system, so that bureaucrats and politicians can be held responsible for their achievements and failures. To the disillusioned, reorganization has come to be a last resort; should it fail, they might find the government impervious to reform and turn for the resolution of their discontents to some deus ex machina. Hence, if there is to be reorganization, it should be effective, and to maximize the likelihood of such effectiveness, it should be preceded by serious public consideration of the principles that should inform it.

Reorganization of the executive branch has become a possibility because there is palpable dissatisfaction with the way the executive branch works, discernable doubt that it can do what it is expected to do. But what is it that the executive branch is expected to do? That question should be the preeminent one in public discussions preceding an effort at reorganization, for a good system of organization cannot be designed without an answer to it. Yet an adequate conception of what the executive branch is expected

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to do is not ready at hand; its function, particularly its function in domestic affairs, is not clear.

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THE EXECUTIVE AS EDUCATOR:
Toward a Renewal of Public Policy

Robert McClintock

Let us start with bureaucracy. It frustrates; on that most all agree. Let that be the point of beginning. But bureaucracy neither will nor should magically disappear; on that most all will also agree, more reluctantly perhaps, but in the end decisively, for bureaucracy is an essential means of action in industry, education, and government. Let that be a premise of the inquiry. Yet bureaucracy is not beyond improvement; on that too most all will agree: its functions might be further clarified and its relations with people made more productive. Let that be the aim of the effort.

Frustration, that is the point of beginning. To an extent, bureaucracy is inherently frustrating. This inherent frustration stems, not from the failures of bureaucracies, but from their essential nature, for bureaucracies in both fact and theory are essentially abstract. Bureaucracy inherently frustrates people because people cannot relate well to the abstractions embodied in bureaucracy. In going about their daily business, people seek substantial, human contact, and when they encounter bureaucratic behavior, their search is inevitably frustrated, for they find themselves dealing with human chimeras. The person met there is mere appearance; the functional reality is an office, a role, a routine; people must discern the ways and needs of this system and make their business conform to it; whereupon they enter the castle, a castle where everything is in essence abstract, disembodied form.

Much of this frustration in the face of bureaucratic formalism does not result from failures in the organization of bureaucracies; it has inescapable human roots, for existentially bureaucracies are human embodiments of abstract reasoning. All institutions exist in flesh and blood only insofar as persons pattern their actions according to some principle, model, example, tradition; hence all organized behavior is to some

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degree abstract. With bureaucracy, however, people expand and rationalize this abstractness; they codify and formalize the patterns; they establish rules, a hierarchy of offices, each with established regulations and prescribed methods of operation. With other forms of organization people make the abstractness the accident; with bureaucracy they make it the essence.

A large part of the frustration with bureaucracy is therefore not particularly significant, for it reflects the inevitable disappointment when the person meets bureaucracy and discovers its abstract character. But some of the frustration is not merely that the person finds abstraction in bureaucracy; some of the frustration arises because persons find particular abstractions embodied in bureaucracies, particular abstractions that deeply trouble them. These frustrations may be taken as potential symptoms of a significant problem. There are many specific complaints, however, and to find among them the most significant symptoms, the would-be diagnostician needs a theory of bureaucracy: where the complaint touches on something the theory holds essential to bureaucracy itself, there one finds a matter worthy of serious investigation.

In the Weberian theory of bureaucracy, which is still the best starting-point for the theoretical consideration of bureaucracy, legitimacy is a most significant matter. Weber contended that bureaucracy was really possible only where the dominant form of legitimating authority was legal and rational, that is, where people were willing to follow direction by a person or office because they believed such a right to command was valid in law and in reason. Unless people generally perceived it as legitimate in this way, in law and in reason, a system of bureaucratic authority would disintegrate. The necessity for such rational legitimation of bureaucracy arose out of the intrinsic character of bureaucracy itself.

Bureaucracy entailed, in Weber's view,

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a great deal of self-effacement; that is a way of stating bureaucracy's abstractness in human terms. The self-effacement, the abstractness, precluded legitimation through charisma or tradition, the other two, more personalized, forms of authority that Weber recognized. To have bureaucracy in any form approaching its pure type, charismatic and traditional authority had to be structured out of the system, and thus to legitimate bureaucracy, to win for it a right of command, it had to be done through legal, rational legitimation.

Weber's reasoning seems cogent. In bureaucracy, as such, there is little room for charisma and tradition. The basic structure is rational and legalistic. A set of rules structures a hierarchy of official functions. Each of these defines a sphere of competence that carries an obligation to perform certain duties, a grant of sufficient authority to perform the duty, and a set of conditions defining and limiting the use of this authority. Powers of control and supervision, as well as rights of appeal, are attributes of the offices, not of the persons who may be holding them; likewise the rules of conduct are attributes of the office and the person needs to bring to the office only sufficient education to enable him to internalize the official norms. Everything of importance is set in writing, and as such it becomes part of the corporate office independent of the person who holds it. People would not spontaneously act according to such an impersonal pattern; they do so because they believe in its legitimacy, because they believe that legitimate authority is legal authority which works through abstract rules and impersonal offices. Such legitimacy is the foundation of bureaucratic authority, and without such legitimacy the system, no matter how desirable its products, will disintegrate because it will lose its power of command. Thus bureaucratic theory suggests that belief in the legal, rational legitimacy of the system is essential to it.

In the cacaphony of concern about bureaucracy in contemporary America, one finds manifest

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in both word and deed nagging doubts about the legitimacy of public bureaucracies. Bureaucratic theory suggests that these doubts should be taken most seriously. Before doing so, one caution, however: by seriously entertaining questions about the legitimacy of bureaucratic arrangements in the context of the American political tradition, one should not be construed as necessarily expressing a belief that the arrangements are undesirable. A set of arrangements may be highly desirable, yet of dubious legitimacy. In such a situation, believing the arrangements desirable and recognizing from theory the significance of questions of legitimacy, one should recognize that the prudent course lies in an effort to clarify the doubt so that, insofar as possible, the arrangements can be restructured, removing the taint of illegitimacy. And if the political tradition that defines legitimacy is sound, such restructuring should improve the very working of the arrangements themselves.

Something a bit more precise should here be said about the particular bureaucratic arrangements that are in question. Bureaucracy has assumed many forms in modern times: our concern is primarily with its federal governmental forms, and this concern can be yet further narrowed. From time to time, certain doubts about the legitimacy of acts by the legislative and judicial branch have arisen, but these do not cause serious dangers to the continued functional integrity of these branches. The functions and powers of these two branches are well spelled out in the Constitution and securely established in precedent and practice. Furthermore, whatever questions of legitimacy that arise with respect to these branches do not touch primarily on the problem of bureaucracy: although administrative staffs are becoming more significant in their operations, neither the legislative nor the judicial branch are yet proverbial loci of bureaucracy in the federal government. Doubts about bureaucratic legitimacy in the federal government pertain primarily to the executive branch.

Here a further distinction should be made: in looking at questions about bureaucratic legitimacy with respect to the executive branch,

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one should separate questions pertaining to national defense and foreign affairs from those relating to domestic public policy. The Vietnam experience, and the attendant concern about secrecy in government, have raised some serious questions about the legitimacy of certain actions by the executive branch in foreign policy and national defense, but the Constitution is reasonably explicit with respect to these matters, and the doubts for most remain confined to particular policies and practices and are basically susceptible to legislative redress. The problems, however, are of a different character with respect to domestic policy, for here the Constitution is mute. Yet in the vast expansion of the federal government that has occurred in our history, the most significant expansion, excepting national defense, has occurred in the federal administrative and regulatory agencies which deal primarily with domestic matters. Throughout the following discussion, therefore, reference to the executive branch will denote primarily these agencies, primarily, that is, the domestic functions of the executive.

In the Constitution, the executive departments were mentioned only in passing, and they did not seem to be significant in the constitutional specification of powers. Yet these departments have evolved into very significant centers of power: that is the problem. The locus of the federal presence in the life of the people has shifted into components of the government that the Constitution ignored. In 1816, one person in 10,000 was employed by the domestic executive; in 1970, almost 5 in 1,000, an increase of near fifty-fold. There is nothing necessarily undesirable in this growth, but it does aggravate the question of how domestic executive arrangements, particularly the administrative and regulatory agencies, fit into the constitutional framework. This question, it should be noted, has become manifest in public affairs in two distinct ways.

First, in recent years popular doubts about the legitimacy of the domestic executive, about its legal and rational authority, have become widespread. These doubts are rarely articulate, yet they are nevertheless manifest as doubts inherently implied in widespread patterns of behavior: people very often act with respect

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to the bureaucratic system on a tacit assumption that it is their prerogative to try to beat the system. This is the assertion of illegitimacy that bureaucratic theory warns against: it shows that many find the bureaucracy to lack legal and rational authority, and this lack radically weakens the system of administration and turns its resources from the pursuit of proper uses to the prevention of improper abuses. Efforts to beat the system are endemic in contemporary America; they hit administrative arrangements from every direction, from the top down and the bottom up, with implicit attacks on its legitimacy. The chief executive who knowingly perverted administrative processes to the pursuit of personal, illegal goals; the career civil servant who stymies a policy he may not like, knowing he can wait things out until someone new with a new policy takes charge; the university official who mouths affirmative action without ever acting affirmatively; the doctor who exploits imperfections in Medicaid to provide deficient service at an exorbitant fee; the welfare fraud who takes advantage of an overworked system to acquire benefits she should not receive: all such behaviors implicitly reject the legitimacy, the legal and rational authority, of administrative arrangements, greatly complicating the proper functioning of those arrangements.

Second, in addition to this denial of bureaucratic legitimacy implicit in behavior, there are less general, more articulate doubts, reasoned arguments that the domestic executive is not functioning legitimately. These arguments, although usually articulated with a certain animosity toward the executive departments, are not major dangers to them. They are arguments about legitimacy, but not dangers to legitimacy, for the arguments are generally reasoned and legalistic, and, as such, no matter how strenuously they oppose particular practices as illegitimate, they work to reinforce belief in the principle of legal, rational legitimacy itself. Not only are the arguments not a fundamental danger, they are potentially a positive resource in efforts to deal effectively with the first way in which doubts about bureaucratic legitimacy becomes manifest.

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Normally, efforts to counter the first form of doubt, that implicit in behavior, aim primarily to control the behavior by making abuses more difficult, diverting administrative resources from their positive human purposes. Such a strategy assumes that the abuses arise from a simple criminal or perverse intent, one that has nothing to do with sincere beliefs about justification, beliefs that merit being taken into account. In many cases, undoubtedly this assumption is correct. Yet, the disposition to reject bureaucratic and legal standards seems to vary from place to place and from time to time, which suggests that it is not an innate perversity distributed randomly among men. Such variations seem, to some degree, and it may be to a significant degree, to depend on beliefs about justification. Perhaps inquiry into serious theories about bureaucratic illegitimacy may give some insight into the more popular belief patterns justifying efforts to beat the system and making them more prevalent.

As noted above, efforts to beat the system are generally inarticulate, but this does not mean that they are necessarily devoid of insight into the ambiguities of bureaucratic legitimacy. It simply means that the insight is inarticulate, is not couched in carefully expressed theory. In the face of this inarticulateness, one needs to look elsewhere for theory, to find a theory that might show an element of validity, of real justification, in efforts to beat the system. If this search is successful, the result will make possible a remedial redirection of the federal agencies, one through which they achieve a greater degree of legitimation in the public view, one which would undercut popular beliefs about justification, one which would hence discourage in many the intent to beat the system. Consequently, the key to the next stage of the inquiry will be to find a serious conception of bureaucratic illegitimacy that is simple enough to resonate widely in popular, largely unconscious belief patterns about the illegitimacy of the governmental bureaucracies. The aim of such inquiry will be, not to abet anti-bureaucratic behavior, but to clarify possibilities for significant changes in bureaucratic arrangements that would minimize the desire to beat the system.

II.

Concern over public bureauracies is not new in American history. From the onset of the federal system, there has been a recurrent doubt about the legitimacy of certain actions by the executive departments, a doubt that centers on the separation of powers doctrine. American administrative and regulatory agencies have evolved as part of the executive branch, yet they clearly perform legislative and judicial functions, which seems to some to violate the separation of powers doctrine embodied in the Constitution. This particular question arose explicitly with the development of the independent regulatory commissions starting in the late nineteenth century. Although it has thus been around for a long time, the question is still very much alive, as is evidenced by several recent, very substantial law review articles. On examination, however, the question does not prove to be very significant to the over-all legitimacy of the executive departments.

To be sure, the administrative and regulatory agencies appear to be part of the executive branch, which, given a strict interpretation of the separation of powers, should not be performing legislative and judicial functions. This expectation of the way things ought to be, however, simply disappears when one examines more closely the separation of powers in theory and practice. The original theory conceptualized government into three functions, the legislative, the executive, and the judicial, and assigned each of those functions largely but not exclusively to separate organs. The separation of organs was functionally incomplete, and the Constitution prescribed a subtle overlapping in the functions of the three powers, creating a tension which is the essence of the system of checks and balances. An isolation of powers doctrine would have entailed a strict correlation of the function with, and only with, its respective governemntal organ. Given such an isolation of powers doctrine, performance of legislative and judicial functions by executive organs would be a serious problem, but the Constitution did not set up such an isolation of powers.

A strict isolation of powers doctrine would

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entail a radical revision of American governmental practices, of practices that have persisted unquestioned throughout our history. It would be, for instance, inconsistent with such traditions as fundamental as the common law, through which much of the law in force is legislated, not by the congress, but by the courts. Mixing of the functions is in principle and practice permitted; questions about it come down, not to questions of principle, but to questions of degree. To answer these questions of degree, rationales justifying the mix are needed, which, for the executive departments, it is a function of administrative law to give. When scholars in this field speak of a crisis of legitimacy with respect to the legislative and judicial functions delegated to executive organs, they speak of a crisis in the rationale used to justify the extent of the delegation. And when they call for a reformation of American administrative law, they call for a reformation of the rationale used to justify one or another degree of the mix, not the principle of mixing in itself.

If there is no real question of legitimacy concerning the simple fact that administrative and regulatory agencies perform legislative and judicial functions, why then does the issue keep coming up? In part, it does so because the degree of the mixing continually changes, thus offending those accustomed to the present mix, who then try to clothe their pique in principle. But in another part, the question may continually arise because there is a further question of legitimacy that is more substantial, but not so easy to state. When people worry over legislative and judicial functions being performed through executive departments, they are staying within the traditional, three-function theory of government. One often hears the large administrative departments described as the fourth branch of government, however. Usually this description is used loosely, with little intention of raising fundamental doubts about the analytic adequacy of the theory of government that the founding fathers shared. Yet if, in truth, the federal bureaucracies are a fourth branch of government, there were serious deficiencies in the theory from which

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the Constitution was fashioned, for it recognizes only three. Somehow, the federal bureaucracies do not seem to fit into our scheme of government, and the real problem of legitimacy may emerge as one inquires to what degree the concept of a fourth branch can be taken with rigor.

In doing that, the first temptation would be to question the numerology, to ask whether the federal bureaucracies are properly understood as the fourth branch. One might contend that resort to the fourth branch is entirely unnecessary by showing that all the functions performed by the administrative and regulatory agencies are at least implicit in the powers of the executive branch. Such a course, in effect, would deny that there is any validity to the loose usage that calls the agencies a fourth branch. Another way to proceed would be to accept that there is a kernel of truth in the loose usage; it does reflect the fact that the executive departments have evolved into something quite different from what seemed anticipated in the framing of the Constitution. Perhaps the administrative and regulatory agencies do not fit into the classic American theory of government. Perhaps they should not properly be understood at all as a part of government.

Such a doubt may at first appear to be a bit bizarre--the agencies are there, ensconced in imperial architecture disbursing billions. Be that as it may, large-scale administrative organization is by no means unique to government, and its development does not seem to be strictly a necessary result of the internal evolution of uniquely governmental functions. Rather, in its modern Western form, large-scale administrative organization seems to have been an independent historical development, not something that emerged from within government, then to spread elsewhere, but something that developed from within itself, taking hold from the mid-nineteenth century in government, industry, religion, education--in most every institutional walk of life.

To be sure, the executive departments, a

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few of them, at any rate, have been part of the government from the very beginning, performing certain routine administrative functions. Their size relative to the total population remained very constant through the Civil War. Since then, they have expanded relative to the population quite steadily. The functions and the methods of performing them that occasioned this expansion have been functions and methods largely originating in the late nineteenth and twentieth centuries, and they are not necessarily functions and methods that were part of government as it was originally constituted. If this view, namely that large-scale administrative organization was something distinct, in its origin, from government, is correct, then a question arises whether the mode of organization thus imported into government is based on principles entirely consistent with the principles of constitutional organization upon which the government itself is based. This may be stated as a formal query:

- 1) Is the system of action based on principles of rational administration in some way essentially different from the system of action based on principles of constitutional government?

In this query, the phrase "rational administration" is significant. It is a phrase from the Weberian tradition of theory about administrative hierarchies, which takes them to be in their basic nature essentially rational. Empirical observers of bureaucracies have questioned this attribution of rationality to them. As Robert K. Merton and others have shown, rational administrative processes have pathologies in them that can make them irrational in their actual functioning, yet, for the present discussion, this point is irrelevant. Even more, this point further reinforces the way that complex organizations are to be seen as having a peculiarly rational character. Weber called the system rational because it was consciously designed to perform given functions in the pursuit of given ends. Bureaucracy comes into being where goals are determined and unquestioned and one can reason systematically about how best to achieve them, creating a hierarchy of functions

that can be routinely performed in pursuit of the given goal. Judgments that particular forms of bureaucracy are in fact irrational do not question the conception that bureaucracies are creatures of a goal-determined rationality; rather such judgments are based on this conception: the goal is given, the system designed, and routine performance in it, the observer finds, creates tensions that make it malfunction, and hence he criticizes it as an irrational means to the end. The judgment of irrationality presupposes the imperative of rationality, understood as a goal-determined rationality; administrative procedures can be meaningful called irrational only insofar as they are expected to be rational.

One can now grasp the fundamental difference between administration and government by reflecting on the sense in which administration is supposed to be rational. It is putatively rational because it is a goal-determined system; its purposes are given and from those a reasoned set of means to the ends can be worked out. Government, in contrast, is precisely not a goal-determined system, but a goal-determining system. In this way, government and administration are basically different forms of human activity. Both are means of regulating collective action, but from that, they diverge fundamentally: government is a goal-determining process, whereas administration is a goal-determined process.

This distinction is a conceptual distinction; as ideal-types, government is a goal-determining process and administration is a goal-determined one. For the moment, let us keep suspended interest in the degree to which these ideal-types correspond to present practice, stating only the hypothesis that they correspond well to general expectation and poorly to actual practice. That disjunction may be the crux of the problem concerning bureaucratic legitimacy in contemporary America, for when people experience what they expect to be a goal-determined process functioning in fact as a goal-determining process, or vice versa, they feel the process to be illegitimate. But it would be premature to dwell exclusively on this disjunction and the sense of illegitimacy it may engender. Let us instead elucidate the conceptual implications of this distinction between government

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and administration, with the hope that such elucidation will build up a set of conceptual distinctions that will facilitate efforts to manage practice effectively and to reform practices that encourage people to believe it is meet to beat the system.

If government and administration are to be understood as basically different forms of action, the one goal-determining and the other goal-determined, then it should be possible to distinguish the executive role, classically understood as a branch of government, from the administrative role, here understood as something that is not government. This leads to a second formal query:

2) Is there a difference between administrative action and executive action, and if so, what is the genius of each, and how can the ongoing tasks of public affairs best be handled through each?

A clue to how this distinction might be made comes from careful attention to the root meaning of executive and administrative. To execute derives from Latin roots that mean together to follow to the end, and its meaning in government, in the goal-determining process, might best be taken as one of putting into effect. To administer derives from Latin roots that mean to be an aid to, to serve, and in the goal-determined process, its meaning is best taken as one of managing. In both usage and practice, executive and administrative matters are all muddled together; that is the problem. Let us here try to separate them conceptually, following out the implications of the distinction between government and administration.

First, and this will take some time, it is important to establish the character of the executive role within government, particularly in its internal, domestic functions. In governing, in determining goals, there is an important role for the executive, for those whose function is to put things into effect. Common practice will suggest to many that "putting into effect" is roughly synonymous with imple-

mentation. As we shall see, implementation properly has to do with administration, and in the context of goal determining, putting into effect, the executive, has a quite different meaning. Government is a process by which a people determine their goals. To do this, they need a function by which they can establish formal statements, on behalf of the collectivity, of goals, intents, principles, standards, laws; this is the legislative function. A direct democracy, in which all took part actively in the legislative function, would have little standing need for an executive function, perhaps not even for a judicial function, for both might normally be performed through the legislative process. But direct democracies can work only in small groups, at most a few thousand people who can meet regularly face-to-face to determine their goals together. Democracy in a populous world must be representative, and in a representative democracy, the legislative function needs to be complemented by an executive function, one that serves to put formal goals into living effect.

When a representative body states goals formally through law, it does not follow ipso facto that those formal goals immediately become functioning goals, ones internalized by each member of the polity so that the personal intent of each coincides with the formal intent of the legislative body. Yet, for the governing process, the goal-determining process, to be followed to the end, such internalization needs to take place, for otherwise the goals will have been merely formally determined, not substantively determined. Hence, in representative government, goal-determining by the legislature does not become a substantive goal-determining of, for, and by the people unless complemented by an executive function that takes care that the laws be faithfully executed.

To execute a law requires more than merely signing it, more than merely implementing the letter of its provisions; to execute a law means persuading people, leading people, to internalize the spirit of its intent. Working to occasion this internalization is the educative responsibility of the executive, the function of

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the executive, the function of following goal determining to the end. Goal determining in a collectivity has not been carried to completion if the governing process stops merely with the formal declaration of a goal on behalf of the people; to carry it to completion, the goal needs to be put into effect among the people, so that each among them recognizes it, not as a formal goal, but either as their personal goal or as a goal that they cannot in conscience make their personal goal.

Without such internalization leading to personal adoption or rejection, self-government is either illusory or irresponsible. Self-government would be illusory when such popular internalization did not come about because the powers-that-be were so secure in their power that they saw no need to bother occasioning it, confident they could impose their goals regardless of what people wanted. Self-government would be irresponsible when such popular internalization did not come about because people were so unconcerned that they did not care to achieve it, intent on living as they pleased regardless of what the collectivity aspired to. With the popular internalization of formal goals, determining them as substantive goals, self-government becomes meaningful, providing a structure of intent in which each can act integrally while contributing to the common purpose. The primary domestic function of the executive is to engender such internalization through educative leadership.

Some will object that such a conception of the executive smacks of "big brother" and should therefore be shunned. The person's right, in reaction to the educative effort of the executive, to reject a common goal as one he cannot conscientiously make his own, has been mentioned. Mere mention of this principle, which is the basis of our provisions protecting the rights of minorities, is not here sufficient, however, for the executive as educator does indeed appear ominously paternalistic. Were the legislative and executive functions effectively joined in a single power in a system other than that of direct democracy, the objection would be telling, but with the legislative and executive functions centered

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in essentially separate organs, the objection becomes less weighty. With such a separation, it becomes an occasion for understanding the system of checks and balances, not merely as a set of procedural safeguards, but as a substantive element in the goal-determining process, one that works in the body politic as a whole, not only as a formal control, but as a control on qualitative results.

If the legislative power performs its function effectively, and formally states common goals that the people can truly accept in good conscience, integrating them into their personal goals, then the executive runs scant risk of becoming paternalistic in seeking to elicit educatively the internalization of those goals by the people. In this case the executive could be truly educative, helping people to realize what they are in potential. On the other hand, if the legislative power functions ineffectively, and formally states goals at variance with the popular will, goals that people cannot accept in conscience, this variance can come fully to light only as the executive takes care that the bad law shall be faithfully executed. In doing so, the executive will elicit, not the internalization of the goal, but a reaction against the false statement of intent, and this reaction can alone pressure the legislative function to revise the formal goal. One who holds that in such a situation a persuasive executive could actually put the bad law into effect, could seduce the people to internalize it, in effect expresses scorn for the sovereignty of the people, and if that is the real objection, it is an objection, not so much warning against "big brother," but one proclaiming his sovereign prerogative.

Far from being a paternalism, a threat to popular sovereignty, the educative function of the executive is essential to preserving the substantive sovereignty of the people. Procedurally, the check on the legislature is frequent popular elections. But if this check is to work substantively, the executive has to have tried educatively to occasion the internalization of the intents the legislature proclaims, so that the people come to know what the

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work of the legislature really means to them, for them, in order that it can be judged by them. If the law embodies goals incompatible with their goals, they will see the incompatibility and call on the legislature to further deliberate. Thus, the substantive, educative effort of the executive activates a substantive check on the legislature, and in the absence of that educative function of the executive, few will know what the formal goal-determining by the legislature really means in substance, and the substantive check on the process will break down.

As a check on the executive function in its educative role, the judicial function has an essential role in the goal-determining system. It at first seems that a problem with understanding government as a goal-determining process would be that there is little place in it for the judicial function, for the judicial power seems to deal with the law as a given. But to see it thus is to see it in a legalistically formal way. The judicial function is needed to deal with human behavior that, from the point of view of the collectivity, is not goal or norm determined, and thus, the judicial function is an essential part of the goal-determining process. Criminal actions in law are occasioned when individual behavior contravenes formal goals or rules of the collectivity, and civil actions occur when, in conflicts between two parties, it is unclear whose conduct best accords with the formal goals. In both situations, determinations need to be made as part of the process of determining the goals that will actually control behavior in the society, and making such determinations is the governmental function of the judicial power.

To carry the goal determining process to completion, to determine, not formal goals, but substantive, lived commitments, it is important to identify and rehabilitate deviance and to determine the fine-pointed meaning of goals in contested cases, and this is the essential governmental function of the judicial power as it handles diverse criminal and civil cases. And in doing this, the judicial function serves structurally in the substantive checks and balances in the life of the body politic, for

it operates as an important measure of the effectiveness of the executive function as here described. If the legislative power passes good law and the executive power effectively leads people to internalize it, recourse to the judiciary will be infrequent. If the legislative power passes bad law and the executive power effectively tries to perform its educative function, the people will react and the bad law in question will quickly go back to the legislative power for further deliberation; hence in this case too, recourse to the judiciary will not be much greater than in the former. If, however, the executive fails to perform its educative function, both good law and bad will pass formally into effect with no substantial popular feeling towards it. In this situation, the law will not shape behavior except through formal enforcement, and deviance and contention will be much more prevalent, and recourse to the judiciary far more frequent. Thus the judiciary power, not only through the substance of its rulings, but by the very frequency with which it has to rule, becomes a crucial indicator of the quality of the performance by the executive power: high levels of criminality and litigiousness in a people are sure signs that the executive function in goal-determining is being poorly performed.

Such reflections are ~~an~~ a prelude to the main concern, which is to distinguish conceptually the executive component of government from administration, which in its nature is something other than government. As preparation for doing so, it has been useful to distinguish the executive function in the process of determining common goals from the legislative and the judicial. In government understood as a goal determining process, the executive is primarily an educative function through which the formal goals stated by the legislative power are put into effect in the polity by seeking to elicit the internalization of them by the people. The effect of this effort, if adequately performed will be either that the goals will take effect in the polity as personal goals of its members or that the issue will revert to the legislative power as one in need of a better formal declaration of intents. Either way, the executive is an essential function in the goal-

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determining process, and if the executive does not perform this function, that process will produce little but empty formalities that have scant relation to the way people act. This conception of the executive function is fundamentally different from the administrative function, the management of affairs that takes place within the goal-determined sphere.

Administration, as such, does not have to do with eliciting the internalization of goals. Rather it takes the goals as a given and manages activities designed, not to put the goals into effect, but to implement the programs of activity that follow from those goals, that fulfill the goals, that convert the goals from goals into actualities. Let us take as example, say that of alleviating poverty. The legislative function, as part of government, can establish the intent to alleviate poverty as a formal goal by passing a body of laws declaring that intent. The executive function, also as a part of government, has the responsibility to put that formal intent into living effect, that is to act educatively in such a way that the members of the body politic internalize the goal, adopting it as one of their personal purposes or personally rejecting it as a goal they cannot accept, whereupon they would try to make the legislature take the matter up anew. The administrative function, not as part of government, but as part of the goal-determined sphere, comes into being with the adoption of the goal as a formal goal of collective action, whereupon it becomes possible to work out systematic means for converting the goal into actuality.

There is a difference between working to put a goal, as goal, into effect, and working to convert the given goal into actuality. The executive challenges the people to adopt as their personal goal the intention to alleviate poverty in their midst, and the administrator manages a program of action designed to convert that goal into actuality, to eradicate the poverty itself. The executive function has to do with inspiring people to adopt the goal as a personally meaningful goal; the administrative function has to do with organizing and managing

effort, insofar as the goal has been adopted, to convert it into actuality. Understanding the relation between the executive and the administrative in this way, we can see that the effective performance of the executive function is crucial to effective performance of the administrative function, for the more fully the goal is internalized, the more fully the citizenry can enter into the goal-determined sphere of activity, personally working towards its fulfillment. Hence, as with the judicial, the administrative provides another key indicator of the quality of executive performance: where there is little popular effort resonating with the administrative pursuit of a formally proclaimed goal, it is a sign possibly that the legislative power has proclaimed a formal goal at variance with the popular will and certainly that the executive power has failed in its function of eliciting the popular internalization of the goal.

So far, in defining government as a goal-determining process and administration as a goal-determined process, as well as in following out the implications of the distinction, we have been seeking to distinguish functions conceptually. Distinctions between functions are not the same as distinctions between offices and organizations. The functions of government are one matter and governmental institutions are another. Having distinguished the governmental function and the administrative function, as well as the executive function within the governmental from the administrative, we need now to ask how they relate in the theory and practice of governmental institutions. So far we have spoken primarily of functions and powers; now we need to speak briefly of the relation of functions to branches in order to establish the proposition that insofar as it pertains to governmental institutions, the administrative function is located primarily in the executive branch. The organizational fact, however, should not obscure the functional distinction that within the executive branch, the executive function is fundamentally different from the administrative function.