

To: David Mathews  
From: Robbie McClintock  
Subject: Bureaucracy  
Date: October 1, 1976

This memorandum is the first of a series in which the reading and reflection I have been doing will begin to come to some fruition. Each of these will have a particular subject, in this case bureaucracy, but each will be written as an effort to view the whole through a particular, and hopefully connections between the various papers will emerge as an important feature of them. They will ~~generally~~ have two parts: ~~the/ix/~~ one attempting a refined diagnosis, another reflecting on possible strategies for action over a fairly long period, a strategy that gets at the fundamental problem. The presentation of these two conceptual concerns, however, will be broken into brief, relatively self-contained sections, for it would take too much time at this point to digest everything into a single, tightly argued essay.

conceptually

1) Your National Newspaper Association speech, March 19, 1976. This is one of your better speeches, I think, and it points up some things about the problem of bureaucracy. I understand that the speech aroused some concern within HEW, as well it might. Coming to grips with the character of bureaucracy is something that can be done only at the risk of unpopularity within the bureaucracy. It is easy to say that this risk should be taken, but it should be taken prudently. Significant action in this area requires really long-term effort, one in which there is a steady working with the bureaucracy over a period of years. To make such working with possible and effective, it may be best not to draw the issue too soon or too directly. The kind of criticisms you voiced to the National Newspaper Association have been being voiced fairly steadily throughout this century--the problems will persist without public cultivation. I think the tactic of discussing publicly small things that do not change the world but nevertheless make a difference may be far more useful in the short-run in actually trying to change the world, or change bureaucracy.

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2) The car without a steering wheel metaphor.

This metaphor works very well in the National Newspaper Association speech, but I don't think it is the right metaphor for getting a handle on the problem of bureaucracy. The difficulty with the metaphor is that it is too mechanical, and as a mechanical metaphor it may perpetuate a fundamental misconception about bureaucracy. One of the basic beliefs about large-scale administrative organization, both within and without the bureaucracy, is that it is a tool, which, when well designed and well used, can serve effectively in the pursuit of public purposes. Looked at historically bureaucracy seems much more strikingly to be a growth, not a construction, and an organic metaphor may be more productive of understanding than a mechanical one. The first that comes to mind, one which is frequently used in anti-bureaucratic rhetoric is obesity--the executive bureaucracies need to be put on a diet, which perhaps they do. For reasons that will become somewhat clear as these reflections proceed, I find this metaphor of the over-weight bureaucracy far too simplistic. Size as such is not the question; the really significant question is character. The metaphor that seems most useful for talking about the possibility of changes in the character of the historic growth that bureaucracy is would be chrysalis, the stage in which the somewhat bloated, indistinct, rather ugly growth that a larva is turns wonderously into a graceful, variagated butterfly.

3) The problem of legitimacy. In your speech you raise the problem of legitimacy as it is generally discussed very well. After having done a good deal of reading in the area, I am still convinced that there is a very significant problem of legitimacy at issue, but that it is not the one generally discussed. You state that "the bureaucracy, very properly, perceives itself as an administrative agent. But, if you look at the way people perceive bureaucracy, they perceive it as if it were wither a legislature or a court. Any good government servant will tell you that the bureaucracy is not properly either one of those; it was never intended to be a legislature or a court; for that

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that, it has no authority." (p. 6) This belief that executive departments have no authority to legislate or adjudicate depends on an interpretation of the separation of powers doctrine that is so strict that it amounts to an isolation of powers doctrine, one that if carried out would undermine the system of checks and balances, which depends on an element of mixing and overlap of the powers. (These matters are discussed well by Malcolm P. Sharp, "The Classical American Doctrine of 'The Separation of Powers'," The University of Chicago Law Review, #385, 1935, pp. 385-436) Over-all, there seems to be no question of legitimacy in the fact that executive departments perform legislative and adjudicative functions, no more so than there is a question of the legitimacy of the common law despite the fact that it is a law legislated by the courts and not the congress. Particular delegations of legislative power by the congress can be questioned as excessive delegations, and particular ~~adjudicative~~ practices by the executive can be questioned for not providing proper due process, but there would seem to be no real question that on no account should the executive do these things.

Why, then, does the question of legitimacy perennially arise? I suspect because there is a far more profound question of legitimacy in the growth of administrative bureaucracies, one that goes to the very heart of the system of constitutional government. It seems to me that this question is one that is very hard to get a grasp on, and that as a consequence of its difficulty over and over again it keeps getting raised as a question of the separation of powers because it looks something like such a question. The basic problem I suspect may be that the real problem of legitimacy cannot be raised from a constitutional context alone--to raise it one must also turn to the sociological and political theory of bureaucracy.

Often the administrative agencies are called a fourth branch of government. This is a bit deceptive because it makes one think of bureaucracy primarily as a governmental phenomenon. But the fact is that bureaucracy has spread into almost every aspect of life, that bureaucracy is supra-

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governmental. I think the basic problem of legitimacy may be approached by asking what is the nature of bureaucracy in and of itself and then asking whether organizations of that nature are consistent with the nature of constitutional government.

Bureaucracy has been much studied in the past one hundred years, and the major contributions to the understanding of it have been well surveyed in a short book by Martin Albrow, Bureaucracy, New York: Praeger Publishers, 1970. Albrow concludes by observing that the term bureaucracy does not have sharp enough meaning as yet to be used very effectively. Accordingly, from here on I will primarily use "rational administration" to refer to the principle that seems to have been applied to human action during the past hundred years or so, giving rise to large-scale administrative organizations. The pre-eminent analyst of this principle has been Max Weber