Bureaucracy and the Democratic System

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A citizen exercising his right to criticize the government is a good deal like a man with a shotgun. If it's the Fourth of July a man can fire his shotgun in any direction and get satisfaction out of the noise he creates. But if he is duck hunting, he has to make up his mind which duck he wants and take careful aim; otherwise he comes home empty handed.

It is much the same way with the citizen exercising his right to criticize the government. He can raise hell generally and get whatever satisfaction there is in hearing the noise he makes. Or he can size up the situation carefully, identify something that doesn't look right and hope to lend a hand to correcting it by addressing his remarks to the precise point.

This short essay is intended for those who want to call their shots. It is concerned with certain problems that grow out of the big government of our times. It is based on the recent writings of a number of people who are concerned that we not let the piling up of power in Washington destroy our democratic way of governing ourselves.¹ I hope that what is said here will help guide

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* Professor of Government and Director of the Bureau of Government Research of Louisiana State University. He has been on leave for government service since January, 1942. His Bureaucratic experience includes his present assignment as Special Assistant to the Chairman of the Federal Communications Commission, where he has general responsibility for the internal management of the Commission; and previous positions as Director of the Foreign Broadcast Intelligence Service of the Federal Communications Commission; Principal Administrative Analyst in the Bureau of the Budget; and Chief of the Training Branch in the Military Government Division, Office of the Provost Marshal, War Department.

¹ The books reviewed are:
the fire of individuals who wish, not to blast away at government generally, but rather to bring down some of the things that endanger the effectiveness and security of our democracy.

It will be well to start by making sure that no misunderstanding arises out of the use of the words democracy and bureaucracy.

DEMOCRACY AND BUREAUCRACY: WHAT ARE THEY?

The essential feature of democratic government lies in the ability of the people to control the individuals who have political power. If the individuals who are put in public office or who in any other way get title to political power have to account to the people for the way they exercise that power, you have a democracy. If the people cannot control the individuals who have power over them, you may have satisfactory government for awhile (no doubt there have been benevolent despots) but you have no way of making sure that such a government will continue to be satisfactory. The arrangements and procedures that make it possible for the people to get rid of a set of politicians and office holders when they are convinced that things are not going right are the features of a government that give it its democratic character.

The word bureaucracy has not been in our vocabulary as long as democracy has, and we are not in as much agreement as to its proper meaning. Some people make it synonymous with arrogant, insolent, arbitrary government. Others make it synonymous with slow-moving, procedure-bound government. I prefer to say that bureaucracy is a word for big organization. I don't think we need to argue about how big an organization must be to be called bureaucratic. When it is big enough that you have to make a search to find who is responsible for its policies, or big enough that it has to have its principal policies and procedures written out, or big enough that you think it takes too long for one part to find out what another part proposes to do—in any such case it is big enough to be called a bureaucracy as I use the term in this essay.

Business corporations, churches, and other non-governmental enterprises can have big organizations and they can be just as


slow-moving, just as procedure-bound, and just as arbitrary as any governmental bureaucracy. The books under review, however, deal almost exclusively with the federal government and what is said in this essay will relate primarily to the executive-administrative branch of the federal government.

**Relation of Bureaucracy to Democracy**

In trying to show how bureaucracy affects the security and effectiveness of our democracy, it will be necessary to show the effect of our big administrative departments on the ability of the people to control the affairs of government. It is not enough to point out that some bureaucratic organizations are not as efficient as we would like. Some grocery stores give rotten service and go bankrupt but that does not prove that capitalism is a poor system. Many ministers of the gospel are poor preachers and some positively go wrong but that does not prove that religion is a mistake.

What we must get at in this essay is the behavior (the attitudes, states of mind, things that go on) or particular administrative departments and the executive-administrative branch as a whole that tend to make it easy or to make it hard for the citizen to find out what is going on and take the action that keeps the policies and performance within the bounds set by the popular will. In view of the content and emphasis of the books being reviewed, this will be done by giving attention to the following questions: (1) What can the chief executive and the administrative departments do that would endanger democratic government? (2) What is the relation of the President to responsible exercise of administrative power? (3) Can Congress control the executive-administrative branch? (4) Can the people control the bureaucracy by direct action? (5) Can government get too big to be controlled?

*How can the executive-administrative branch endanger democracy?*

There are four principal ways in which the chief executive and the various departments can effectively obstruct democratic processes and weaken or destroy the democratic institutions of the country: (a) They may interfere with or prejudice elections; (b) they may misinform the people about the issues that confront the public, about how these issues may be dealt with, and about what is being done to meet them; (c) they may inaugurate and pursue policies of government which are positively contrary to
the public will; and (d) they may, by sheer inefficiency in their operations, destroy popular faith in democratic government.

*Prejudicing elections.* The chief executive and the principal officers in administrative departments are leaders of political groups. They got in office by winning elections; they hope to stay in power by winning elections. It is natural that they should seek to win elections by whatever means seem promising, including the use of the governmental authority and power that they control.

In some countries the crowd in power uses the army to break up political parties, to control voting, and to destroy the whole system of free elections. We appear to be safely past that stage in the United States. But the great organizations of civilian public employees can be used to the same end. State and city police forces can break up political meetings, scare people away from the polls, destroy ballot boxes, line up illegal voters, and what not. A state highway department can plaster the telephone poles of the state with posters, coerce voters by putting them on and off the payroll, haul people from precinct to precinct for multiple voting, and a lot of other things that ought never to be thought of. No one in Louisiana who is old enough to read this article needs to be told about these things.

It is noteworthy that none of the writers under review finds it necessary to discuss this problem in describing the power of the federal bureaucracy. This is not due to any failure to realize that free elections are a basic pillar of the democratic process. They simply see no need for discussing activities of this sort. They take it for granted that the FBI will not line up voters for the party in power, and that the employees of the Department of Agriculture will not break up political meetings. The country, by common consent, long ago put a stop to skullduggery of this sort in the federal government. We wrote the latest chapter in that book of reform during the past decade when we enacted the Hatch Act and supplementary legislation making it illegal for federal employees to participate in the activities of political parties. Louisiana attempted the same thing in its civil service legislation in 1940.²

This is not to say that the party in control of the federal governments finds no way of using the power of government to influence elections and make sure its continuance in power. They

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² Cf. Hyneman, Political and Administrative Reform in the 1940 Legislature (1940) 3 LOUISIANA LAW REVIEW 1, 22-23, 43-45.
act in more subtle fashion; the purpose of the act is rarely admitted and frequently hard to identify. Necessary action on legislation is delayed until after elections; contracts are granted or refused; the enforcement of the law grows more lax for some and more rigid for others; important prosecutions are stalled or dropped altogether.

These are things that may be done on the grand scale under the lead of the President. They may be the act of a particular administrative department under the lead of a cabinet officer. They may be the program of a bureau chief or the head of a local office of a great department. And these are things that may vary in the slightest degree from the most honest and impartial administration of government. Every popular act of the government is a bid for votes for the party in power, since a program that satisfies the people is the strongest reason for continuing the administration in power. How are you and I to know when the administration puts a partisan or dishonest twist on its action for the precise purpose of picking up some votes that wouldn't otherwise be had?

This matter of the use of governmental power for improper purposes designed to win elections goes to the very heart of democratic government. None of the books under review address themselves sufficiently to this problem to recommend them as a place to acquire any great enlightenment on this subject. The full analysis of this problem awaits the hand of a careful and wise observer. Either Appleby or Pusey could do it the way it should be done.

Misinforming the public. Free elections become a farce if the people are denied access to information or prevented from having the kind of discussion that clarifies their minds and enables them to form judgments about candidates and issues. The individuals who control the government have an enormous power over the ability of the voter to know what the facts and issues are. Office holders seeking reelection give a one-sided view of their achievements in office. Party managers and publicity agents paint black and rosy pictures without any regard to the facts unless they are completely favorable. Newspapers are bought off by giving them government contracts for printing and party contracts for advertising.

These practices have led to insistent and persistent demand for more frequent and more complete official reports by government departments—national, state and local—describing what the government has actually been doing. Lately, however, we have
begun to fear that maybe we are doing too much reporting. The administration in power determines what will be said in the official report, be it annual report or today's press release. The administration in power determines their format and subject to some control by statute and appropriation, determines how much will be spent on reports, how many copies will be printed, and to whom they will go. And all this is done with your money and mine. Money we pay in taxes is thus used to convince us that the best thing we can do for ourselves is vote the present administration back in power.

No doubt all the authors of the books in review know this as well as you and I do. Only three of them give any attention to the problem, however. Crider, Pusey and Sullivan are concerned about what is happening. Crider goes into the problem at greatest length, shows how government reporting and official propaganda relate to the functioning of democracy, and states clearly his fear that our money is being spent to sell us another term of the crowd in power. Pusey confines his comment to the period of World War II. He charges the Roosevelt administration with having withheld information essential to intelligent action by the public, with having timed the release of information to serve the advantage of the administration in power, and with having colored the account of events to cast a rosier hue on the administration's success in prosecuting the war. But Pusey does not lay out in clear language the significance of these practices for the democratic process. Sullivan has a chapter of twenty pages on the "War of Ink Pots" which appears to have as its primary purpose to show how the federal government wastes money on publicity. His account contains a few paragraphs of comment (principally borrowed from other writers) on the relation of excessive publicity to popular control of government.

None of these books advances us very far toward the resolution of one of the greatest dilemmas confronting democratic government—how to get full reporting of the acts of government officials without also getting prejudice or propaganda in favor of those who are in power. This is another good task for Appleby of Pusey.

*Pursuing policies contrary to the popular will.* One of our most treasured maxims is that we have a government of law and not a government of men. The statement has two implica-
tions: that all basic policies should be determined by the legis-
larive department, and that administrative officers, in carrying
out those policies, should proceed according to announced rules
and standards and not act in an arbitrary or capricious manner.
Both these implications of the maxim are sound ideals for demo-
cratic government.

The representative legislative assembly is an indispensable
feature of democratic government today as in the past. It was
by grabbing the power first to advise the king on policy, then to
veto the king's proposal, and finally to propose and decree public
policy by enactment of statutes that the people of England
represented in Parliament got control of their government. The
failure or inability to establish sturdy and stubborn representa-
tive lawmaking bodies is a principal explanation of why the
common man has not been able to get a firmer control over gov-
ernment in European countries. Even so, the first act of the dicta-
tor of our era was to destroy the representative assembly and
so remove a primary source of organized opposition to his will.

In our own country the lawmaking power was firmly lodged
in Congress by the federal constitution. The President shares the
power, but the construction consistently given the constitution
allows him no power to decree low on his own authority except
in certain specified situations, only one of which is important—
the authority to act as commander-in-chief of the armed forces.
The situation as respects state governments differs widely over
the country. In some states the governor and other executive
officers have virtually no power except that given them by act
of the legislature. In certain other states, Louisiana is a notable
illustration, the constitution vests directly in the governor and
certain other departments of government a very considerable
power to make public policy. This practice of removing blocks
governmental authority from the control of the representative
assembly has undoubtedly gone furtherest in the case of certain
state commissions—the Louisiana Public Service Commission, for
instance—that have been given power to make the law on certain
matters, interpret it, adjudicate alleged violations, fix penalties,
and order punishment. The whole legislative, judicial and ad-
inistrative functions are thus combined in one body with no
provision for check by any other governmental authority except
the power of the legislature to withhold funds and the power of

6. La Const. of 1921, Art. VI, § 6. Cf. Hyneman, Administrative Adjudica-
the courts to find the whole business contrary to the United States Constitution.

The ability of an administrative department to abuse its power is not measured entirely by the sweep of its discretionary grant. It may effectively extend its authority by taking preliminary steps which so prejudice a situation that the legislature has little choice but to confirm and extend the policy tentatively established by the bureaucracy. By the emphasis it gives to administration—vigorous action here, little attention to that, no action at all in these cases—the department may convert a carefully worded policy of the legislature into a very different thing. And, if it is allowed to get away with it, the bureaucracy can, of course, nullify almost any purpose of the legislature by inaction.

General expressions of policy have to be fitted to a great variety of specific situations and this undoubtedly necessitates a very great delegation of authority to administrative officials and departments. Whether these delegations are compatible with democratic ideals or not depends on the importance of the affairs to which they relate and the certainty that the administrative action has to comply with the public will. The British have developed the practice of making many of the acts of administrative departments conditional on the subsequent approval of Parliament. We have made almost no use of that device. On the other hand we have begun to develop arrangements for more immediate popular control over the administrative department—by establishing representative authorities to exercise the power, by creating representative advisory bodies to advise the officer who has the power to act, and by arranging for popular referenda on the acts of the administrative officer. These devices are discussed in more detail below.  

It is a matter of opinion whether the arrangements for popular control of power are keeping up with the delegations to the executive-administrative branch. I happen to think that they are not, either in the case of the national government, or the government of the forty-eight states. It happens to be my own opinion first that, with what Congress gave him and what he took, the President acquired more power than he ought to have had for running the country during the late war; second, that Congress failed in its duty to pick up and incorporate in statute many of the acts which the President very properly took in the first instance; and third, that the President in turn gave some of the

administrative departments and agencies wider discretion than the necessities of the situation demanded.

At least five of the books in review have something to say concerning the danger that the executive-administrative branch will be given too free a hand in making policy, or will set out on policies of its own liking, notwithstanding what the legislative branch may have decreed. Crider reveals throughout his book that he dislikes the tendency of recent years to let the chief executive and the administrative departments fix a great part of the policies which they will enforce, but he does not bring his observations together at any point in a significant discussion of the problem. Sullivan is against everything the national government does and the way it does it, but with respect to this problem as with respect to all others, he offers nothing that could help a responsible citizen make up his mind what he ought to do to improve matters. Milton, whose entire book is devoted to the use of presidential power, throws surprisingly little light on the relation of the chief executive's forays to the maintenance of institutions and ways that time has proved to be essential to a democratic system. His principal purpose is to recount the things that great men did; not to show what impress these great men made on our democratic system. Pusey does a much better job on the seizure of power by the President in World War II. In a chapter entitled "Government Outruns the Law" he shows in detail how President Franklin D. Roosevelt assumed authority, created governmental agencies and vested power in them, determined how the public money should be spent; and how he justified all these acts under a theory of presidential power in wartime which Pusey thinks entirely improper in view of the language of the constitution. But Pusey's discussion concerns the extension of presidential power; he has little if anything to say about the tendency of the bureaucracy generally to defy Congress or prejudice public policy.

Appleby in his *Big Democracy* had a great deal to say about the practices of administrative departments that are designed to fit policy to the needs of the people. It is clear enough that he recognizes Congress as supreme in establishing the purposes and objectives of government. He has virtually nothing to say, however, about the danger that bureaucracy will try to go its own

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11. Pusey, op. cit. supra note 1, at 48-73.
way in defiance of Congress and the people. It seems a fair conclusion that he considers the danger inconsequential in our system of government.

**Inefficiency of government.** Government is established and maintained to do things. No government will long be tolerated by an intelligent and free people if it consistently fails to do the things the people want it to do. When they get all out of patience with reform movements and repair jobs that still leave them without the kind of government they want, the people may come out for a new kind of government altogether.

If the American people are to keep their faith in democracy, therefore, our democratic system must work with some degree of efficiency. It is on this matter of efficiency that Juran and Appleby have most to offer the reader. Crider and Sullivan have plenty to say about bureaucratic inefficiency but much of it is not convincing and little indeed is constructive. Sullivan particularly is content to point to instances of a department's failure to accomplish its purpose and do it gracefully. He and Crider make little effort to explain why inefficiency is so widespread and persistent and they make precious little effort indeed to show what can be done to make administration more efficient, other than quit trying to supply government to the people.

The books by Juran and Appleby are of a very different quality. Juran appears to be by profession a management engineer. In his *Bureaucracy: A Challenge to Better Management* he combines his prewar industrial experience and his wartime experience in the federal government in an effort to explain why governmental bureaucracy behaves as it does, and what might be done to make its performance more efficient than it is. A book of less than one hundred and fifty pages (and not very compact print at that) is much too brief to provide a detailed account of the inefficiency of the federal bureaucracy, let alone to explain how that condition came about and to suggest how it might be corrected. Juran's work is accordingly only an introduction to the problem. It strikes me as a work of great good sense, generally sympathetic toward the bureaucrat, and an effective antidote to the distortions and fulminations of so much of the writing about government, typified best by Sullivan. In my opinion, Juran does not charge our civil service system (the legislation and its administration) with its full share of responsibility for the shortcomings of federal administration. On the other hand he does a very good job of showing how your readiness and mine
to jump on the bureaucrat the minute he does something we
don't understand forces the bureaucrat to cover up in a way that
is itself disastrous to efficiency. A well oiled industrial organi-
ization, says Juran, will have one management engineer for every
one hundred employees or less. Who believes that Congress or
the American people would allow a federal department to staff
itself with management experts at one-tenth of that ratio? I think
Juran shows pretty clearly that we have poor government in
large part because the public, including businessmen in Congress,
is not willing for the bureaucrat to imitate the methods of the
businessman.

Appleby is not a management engineer. He is a newspaperman of wide experience who came into the federal service in 1933, held important positions in at least three administrative departments, and went out of the federal service to a higher paying job in the radio industry eleven years later. Appleby's Big Democracy is not directed toward a specific central problem as is Juran's book. Instead of developing propositions related to a specific objective like "how to make the bureaucracy efficient," Appleby is merely concerned to record his observations and his thought on a wide range of problems which he has encountered in his relations with government and politics from both inside and outside. The book shows that he has had a wide range of interests and experiences, that he is a penetrating observer of what goes on, and that he has acquired wisdom in respect to the ways of men.

Appleby's book is therefore rambling and many-pointed; not compact and single-pointed. He accepts broad programs of governmental action in social and economic affairs as inevitable; he believes that governmental action must accord with the wishes of the people; he believes that the people who man our administrative departments are by and large devoted both to the accomplishment of the popular will and to efficient and economical operations in achieving those ends. Himself sympathetic with big government, with democratic control and with the bureaucrat, he believes that if you and I understood the bureaucrat and his problems as he does, we would join hands with Congress, department head and civil-servant-down-the-line to produce a more efficient and more democratic brand of government than we are now getting. I think he does a pretty good job of it. His book should discourage some of the Fourth of July firing in the air.
What is the Relation of the President to Responsible Exercise of Administrative Power?

I do not believe there is any tougher problem to handle, in an analysis of responsibility in administration than the role played by the President. He is, of course, the chief executive and is therefore supposed to control the administrative departments and keep them in pursuit of the public welfare. But as chief executive and leader of the administrative branch the President, above anyone else, is in a position to turn the great mass of bureaucratic power against the people. Twenty-five years ago this was not a matter of more than academic concern to us. The world's experience with dictatorship during the past few decades, and the certainty that any would-be dictator for America would make the presidency his ultimate goal, forces thoughtful people in our time to inquire just how much power the president has and how much chance we have of controlling it.

The paragraphs that follow make no pretense of setting forth all the considerations that are relevant in such an inquiry; I hope they indicate what kind of considerations are important. They center on three bases of the President's power and attempt to relate each to the problem of making sure that the executive-administrative branch will conduct itself in accord with the wishes of the people. These three bases or pillars of presidential power are: (a) the position of the President as political leader; (b) the President's legislative power; and (c) the President's power over the administrative departments.

The President as political leader. Any man who is devoted to democracy as a form of government believes (1) that the people are generally the best judges of what is good for them; (2) that the elected representatives of the people should fix the policies that government is to carry out; and (3) that executive and administrative authorities should honestly carry out those policies or give up their power. This theory is worked out with great clarity and simplicity in the city-manager form of government. The people elect the city council; the council formulates the policies; and the council appoints the manager and can fire him if he does not honestly carry out its policies. Responsibility (or accountability) is clearly established.

No such simple relationships exist in the federal or state
governments. The people elect Congress and state legislatures to make public policy but they elect the president and the governors to help make public policy. Sometimes they elect a Republican legislature and a Democratic governor, apparently fully aware that the governor is pledged to fight for policies which the legislature is pledged to oppose. We do not do that in the federal government but we frequently establish a party in power in one or both houses of Congress while a president of the opposite party remains in the White House.

This might not be so bad if the President, like the city manager, understood that he had an obligation faithfully to carry out the wishes of Congress. Instead, he understands he is pledged to put into effect the principles to which his administration is devoted, only slightly modifying them, if modifying them at all, in view of the later mandate of the people.

But it is not only when different parties control the White House and Capitol Hill that supremacy in determining public policy is questioned. At any moment after a sweeping victory which gives the same party control of both White House and Congress, a conversation like the following (this one is completely fictitious) might take place:

**Majority Leader of the Senate:** "But, Mr. President, I have to remind you that the Congress is the lawmaking authority. In passing the Farm Credit Act, Congress made it quite clear that it did not intend to extend this class of loans to tenant farmers. In your speech last night and in the press release by the Secretary of Agriculture this morning you say that tenant farmers and sharecroppers will be able to take advantage of these loans. I have to insist, Mr. President, that the debate in each house as well as the language of the House and Senate Committee reports make it quite clear that the policy of the law does not extend this class of loans to these people. This administration ought to carry out the will of the law making body, not to defeat it."

**The President:** "Nothing hurts me worse, Senator, than to be obliged to disagree with the leader of the Senate or with you personally as to what is the policy of this administration and its laws. I was elected to this office and several hundred of the members of this Congress were elected by the people with a clear mandate to do something about the condition of poor people on the farms. Not only that, when I approved the draft of the bill that went before the two
houses and later when I signed the bill and made it a law, it was my understanding and my intent that these credits would be available for tenants and sharecroppers. There is nowhere language in the act which excludes these people from the benefits of the law. In view of what I said to the people of the country on this subject last fall, I feel I have an obligation to extend these credits. This administration cannot expect to return to power four years from now if it excludes these people from these benefits, and neither do I believe, Senator, if you will pardon me, that you can successfully avoid responsibility on this matter when you come up for reelection in your state.

This is the dilemma. If the chief executive, having the great mass of administrative power (the bureaucracy) under him does not conform to the policies made by the elected policy making authority, dictatorship is incipient. But the chief executive who commands that mass of bureaucratic power is himself the acknowledged leader of the policy makers and has the greatest prestige of all of them.

How are you to resolve this dilemma? How free the president to lead, to insist, to coerce perhaps in getting established the policies to which he pledged himself before the people, yet make it impossible for him to command that mass of power in defiance of the will of the people?

Such writing as has been done on this problem falls generally into three schools of thought. First are those writers who propose that the President be made responsible to Congress, giving up his office when Congress no longer has confidence in him or is no longer willing to follow his leadership. These writers would have the United States imitate the British cabinet system. President and Congress would be elected on the same day (whether to continue the overlapping six year terms of Senators would be a problem); the President would be the acknowledged standard bearer of the victorious party and the acknowledged leader of Congress; he would have responsibility for driving Congress to enact the policies to which he and his party are pledged and for driving the bureaucracy to put those policies into effect. But if he turned out to be a weakling, proved incapable of keeping faith with the pledges made by himself and his party, or proved to be a would-be dictator headed for more power, the Congress would forthwith turn him out of power and send him back to the people to try to sell his theories all over again.
This system, when it works as planned, presents many very admirable advantages. If the top party leader and official (Prime Minister, President) has proper devices to discipline the legislature when it fails to keep faith with the party's pledges, more unity of leadership and followship can be achieved than we frequently have under our system. If the top man proved too greedily bound for power, the legislature, being many men chosen from many and diverse constituencies, can be counted on to resist him. And the cabinet system does provide a way of getting issues before the people when it seems desirable without waiting for the lapse of a four year term as we do.

Institutions, of course, have a way of not working out quite as we picture them in theory. The British people find plenty to complain about in the way their government works; indeed there is a growing conviction that the most unsatisfactory features of their government are inherent in the system of parliamentary-cabinet relations which we are asked to imitate. Assuming that the British system worked perfectly it would not be easy to decree as successful a form of parliamentary responsibility for us. The British political machinery has many gadgets which were developed through generations of experience, they are geared into the political ways of the British people, and they are essential to the functioning of their system. They have a king, they have in a show down only one house of Parliament to deal with, they elect no official on a nationwide ticket as we do the President. We could hardly throw out our system lock, stock and barrel in favor of what the British have developed over the centuries. If we try to graft their flower on our stalk, we may get a fruit we do not want. In any event we would have to start all over again on the task that requires generations in any democracy, that of bringing the people up to the point where they understand their system of government and have confidence in their ability to control it.

The second school of thought on how to reconcile the President's power with the nation's safety may be called the "power and faith" school. The doctrine of this school consists of two propositions: give the President plenty of power, and have faith that he will not abuse it. Its argument runs something like this: People do not overthrow their institutions while they are prospering under them; the power of government can be used to assure that the nation will be prosperous; governmental action to that end must be planned, courageous and forceful; planned,
courageous and forceful government can be obtained only under integrated leadership free from obstruction; such leadership can be found only in the President; and he must have sufficient power in his own right to thrust the government forward on social programs that assure prosperity for the people.

Thus is the case established for power. The argument in support of faith is not so well developed. The people elect the President; he represents them; indeed he is the only true representative for the whole people since members of the House represent their respective districts and Senators their respective states; the people would not elect as their representative in the top place of power a man who would turn against them; and if they did, they would turn him out before he could do any great damage.

It was the doctrine of power and faith that supplied the principal justification for the enormous sweep of power given to the President during the depression and extended during the late war. The doctrine seems to be as popular with professional students of government as with professional practitioners of politics. It is akin to an optimism formerly held by the country's business men who gave little attention to government and politics "because we can make money faster than the politicians can take it away from us." I am afraid that the present day optimists who believe that "government can bring prosperity so fast that dictatorship can't catch up with us" may come to a like disillusionment.

There is a third school of thought on the resolution of the dilemma presented by the need for vigorous and persistent leadership by the President and the necessity of restraining him from using the power he possesses contrary to the wishes of the people. This school accepts as permanent our present system of Congress and President with the authority given them in the Constitution, but seeks to achieve a better balance in the interplay of their powers. This school would arm the President for more effective leadership in the formulation of policy, but would also increase the power of Congress to force an accounting as to how power is used.

Mr. Pusey belongs to the latter school. As noted above,12 a chapter of his Big Government provides a good statement of the range of power which the President enjoyed in World War II.

12. See supra p. 318.
Three more chapters deal with alternatives to the piling up of presidential power, or search for checks which can be put upon it. Pusey wants vigorous, effective government, but he wants safeguards against anti-popular government as well. He sees much to regret in the centralization of power in Washington, but he does not think that a campaign to give power back to the states will yield much fruit. He sees much to admire in the British type of government, but concludes that "parliamentary government is no answer to our dilemma." While he believes the Supreme Court, unpacked, is a potent bulwark of democratic government, he does not suggest, and I suppose does not believe, that it can sweep back the power inadvisably given to the President.

It is to the improvement of Congress that Mr. Pusey turns for a corrective to the present drift of powers to the President. As a newspaper man about Washington, he has found Congress as a whole to be a group of hardworking, well intentioned intelligent men. He would reapportion committee work so as to necessitate fewer committees and would find a way to select chairmen which would give them more effective leadership. He would give Congress a staff to find the facts that it needs. And he would establish leadership within Congress which would both give it "a greater degree of cohesiveness and a better sense of direction," and marry it to the chief executive in planning and formulating policy.

To point out in this detail that Mr. Pusey is attached to one school of thought is not to say that the other authors under review hold to different faiths. The fact is that none of them say enough about the dilemma of presidential power and presidential responsibility to identify their philosophy or recommend that they be read for enlightenment on this problem.

Mr. Milton's book, The Use of Presidential Power, 1789-1943, is especially disappointing. Apparently his entire purpose in writing the book was to show what our stronger presidents did in the exercise of their leadership. He recounts the principal events in the administrations of eight presidents (Washington, Jefferson, Jackson, Lincoln, Cleveland, Wilson and the two Roosevelts) which reveal how they met the issues that confronted them and won more than an even share of their battles. These events or incidents are discussed under one or another of six headings which Milton treats as "sources" of presidential power. After

reading the book, I am unable to differentiate them clearly as separate sources of power. They appear to be: (a) the prestige of occupying the nation's highest office; (b) the special authority which the President has in foreign relations; (c) the authority as Commander-in-Chief of the armed forces; (d) the President's general executive power (including the obligation to take care that the laws are faithfully executed); (e) the President's power as leader of a political party; and (f) the President's popularity with the people.

The book does not convince me that, in a practical political situation, the President's action manifests itself in such a way as to permit any significant differentiation between action derived from the first listed "source" of power and action derived from the last two "sources." The author does show conclusively enough that strong presidents took vigorous action on political issues. I do not think his book reveals much more than that. "One turns to the future with a feeling that the past gives some guidance to what perhaps we may expect. If the record has any core of meaning, it is that the way any individual in the high office will use his presidential power is altogether unpredictable." This, I believe, is as near to philosophy as Mr. Milton comes in the book. "... it can be confidently predicted that the President of the United States will employ old powers in new ways, or discover new sources of power, if he even begins to cope with the crises which will continue to arise."14 This, I believe, is as near as the author comes to an expression of concern that bureaucratic power under the direction of the President may possibly at some time be turned against the people.

The President's Legislative Power. A good deal of what was said in the preceding paragraphs is directly related to the question of our wisdom in entrusting the President with as much legislative power as we have. In my opinion experience has proved that the values which democratic government intends to secure are best secured if fundamental policy is made and changed only with the concurrence of a representative assembly. When decisions are made by or concurred in by an assembly consisting of a considerable number of individuals chosen by the people from a broad base of independent constituencies and in a position to give their principal attention to the public business, the best protection of the public interest is achieved. When power to make public policy by his sole action is vested

in the chief executive too much invitation is given for the coup d'état, too much opportunity to move by fait accompli.

Perhaps no more need be said on that point. But the possession and exercise by the President of broad power to make policy, in my opinion, has had a secondary effect of great seriousness. As I see it, the functioning of government by presidential decree has engendered in the bureaucracy widespread and deplorable disrespect for Congress and other democratic controls. The fact that Congress let the President decree so much of the policy from 1933 to date, and the fact that the President showed so much audacity in the exercise of some of it, have caused heads of agencies, bureau chiefs and more lowly civil servants to come to believe that Congress is not competent to pass on policies of crucial importance. The fact that the President and his self appointed advisors did so much of the country's thinking for it has caused many people in the bureaucracy to think that the chief executive and the administrative branch constitute an elite more fit than either the people or their elected representatives to say what is good for the people.

Whether or not the effects that I apprehend are a fact is a subject for argument. I draw from Mr. Appleby's pages that he does not believe any grave danger to democratic ways has been incurred. Pusey would at least argue the matter with him. Crider and Sullivan definitely consider the President's assumption of power to have widespread consequences of danger. Milton appears to be wholly unconcerned.

The President's Power Over the Administrative Departments. The past several pages are concerned with the possibility that the President has acquired power incompatible with a secure foundation for democracy, and with the possibility that his possession and exercise of that power has resulted in dislike if not contempt for democratic control on the part of the bureaucracy. Clearly the President has the power to point the administrative departments toward one goal or another and to inspire bureaucracy for good or for evil. But just how much power does he have? How much influence can be exert on the policies and purposes of departments? What can he actually do, for instance, to force efficiency into an organization where efficiency is notoriously lacking?

The literature on the subject is overwhelmingly in agreement that the President can exert a complete, dominating and con-
exclusive control over the bureaucracy if the administrative branch is properly organized and if the President is given proper staff assistance. This is the assumption on which that most influential document, the Report of the President's Committee on Administrative Management is based. This document, submitted to the President and to Congress in 1937, proposed a tightening up of the hierarchical structure which establishes a chain of control from top to bottom through the power of superiors to appoint and remove subordinates; recommended a great expansion of the staff that reports directly to the President on things in general; and urged action by Congress which would enable it to check up more effectively on the doings of the President and the administrative branch. Under this proposal, the independent regulatory commissions (with the exception of the Interstate Commerce Commission) would have been absorbed into departments with single executive heads.

The legal profession generally, fearing that quasi-judicial regulatory action would take on more arbitrary and political character, opposed the recommendations of the President's Committee as related to the independent commissions. Professional students of government and politics (in academic lingo, political scientists) seem with very few exceptions to have endorsed the whole prescription. The recommendations were put partially into effect by action of Congress and the President during the years immediately preceding the war.\footnote{See McGuire, The American Bar Association's Administrative Law Bill (1939) 1 LOUISIANA LAW REVIEW 550 and answer by Jaretzki, The Administrative Law Bill: Unsound and Unworkable (1940) 2 LOUISIANA LAW REVIEW 294.}

The President's Committee assumed that, given an organization such as it proposed, the President could effectively control the administrative branch. It did not inquire critically into the possibility that the assumption might be untenable. In a recent carefully reasoned article, Mr. Pendleton Herring urges that Congress keep its hands off the administrative departments, except through appropriation of money, enactment of controlling statutes and investigation where abuse appears actually to have occurred. I understand that Mr. Herring can support such a recommendation (i.e., that Congress should keep out of the current operations of the administrative departments) only if he is convinced that the President, if watched carefully by a critical Congress, can and will maintain a firm hand on the administrative hierarchy. But Herring, like the President's Committee, assumes the President's ability to do this; he does
not establish it by citation of facts and reasons. His carefully developed argument centers on the embarrassment and frustration that results from congressional meddling.\textsuperscript{16}

As I see it, what has been written about the President’s ability to control the administrative branch is little more than a declaration of faith. Whether he can do or does do the things that constitute effective control is a “Your guess is as good as mine” proposition. Can he, in view of the demands on his time, ever know or long remember the main facets of the policies upon which the government is engaged? Can he give enough time to even the top figures in his administration to hear them point out the parting of the ways in issues of policy? Can he ever do more in the coordination of departments than say “Get together!”? When public clamor or the intense heat of intra-administration war forces him to act, can he act with more precision than to smash with an axe?

Surely he can on some issues. The President is for spending federal money on housing or he is against it. If no houses are being built, he can find out why if he wants to, and he can take time to find out why at least once. If it is because his housing program has fallen afoul of the policy pursued by the federal loan agencies, he can demand that the two departments get together and he may even find time to hear the main arguments and contribute his own judgment to a solution.

But I do not think the President can do much of this. There are not enough hours in a day or enough days in a four year term for a human being to do the other things that the President cannot escape doing, and also do very much that can be called direction of the administrative departments.

It seems to me that the integration and coordination of the administrative branch is much more of an institutional operation than an act of the President. It is a matter of the way the Bureau of the Budget acts on the plans of departments—both the announced policies of the Director of the Bureau and the undisclosed standards of judgment which the budget examiners adhere to. It is a matter of intelligent action—and unfeeling bureaucratic resistance to action—in the Civil Service Commission. It is a matter of General Accounting Office attitudes towards departmental expenditures which hell and high water could not change.

\textsuperscript{16} Herring, Executive-Legislative Responsibilities (1944) 38 Am. Pol. Sci. Rev. 1153.
Bureau of the Budget, Civil Service Commission, General Accounting Office and a host of other devices integrate and coordinate the administrative branch. But the President, nevertheless, can personally exert an enormous influence upon the pace and quality of administration. He can encourage this, reverse that, and make decisions which enliven the whole tone of administration or take the heart out of everyone who likes to see order, confidence and mutual good will among officials. Some idea of the difference between individual presidents in this respect can be obtained from Milton's *Use of Presidential Power, 1789-1943*. What Milton has to offer must be pieced together from scattered and meager bits of evidence, and it doesn't add up to a very illuminating picture how the President moves toward his objectives by maneuvering the power of the bureaucracy. None of the other books under review do any better on that point.

*Can Congress Control the Executive-Administrative Branch?*

1 The time-honored and experience-tested way of keeping the chief executive and the administrative branch in hand is to set up a representative assembly to control them. Without exception, every nation that makes any pretense at having popular government depends on an elected assembly to restrain and guide if not to control the chief executive and the bureaucracy. As noted above the downfall of absolute monarchies was accomplished by the establishment of parliaments; and one of the very first moves of the dictator is to destroy the legislative body.

The explanation of the power of the representative assembly is as simple as it seems at first glance. Barring act of God, there is nothing to control the action of men except the action of other men. The representative assembly, in this case Congress, is chosen by separate constituencies scattered from one end of the country to the other. The voters in these constituencies can be just as independent as their interests and their courage incline them to be, and the representatives they send to Congress can and do defy the President when conscience or local interest dictates. It is a great honor to serve in Congress and men of ambition go out for it. Most of the constituencies are populous (entire states in the case of Senators) and generally it takes tough men to win the seats and hold them.

Congressmen are pretty stout politicians in their own right, and there are a lot of them accumulated in the two chambers.
No President has ever succeeded in lining them all up, even in time of war; and rarely if ever does a President have a firm hold on the loyalty of all members of his own party. An assembly like this is, as long as it exists, a fatal obstruction to the ambitions of a would-be dictator. Concepts of public interest, loyalty to established institutions and practices, considerations of local, special or personal advantage—all of these things combine to block the autocrat's path to power.

The effectiveness of the representative assembly depends on the quality of the men who are elected to it and on the power they have over the making and enforcement of the nation's policies. The quality of the men will be determined by the health and vigor of the entire political system of the country. If the people are concerned about public affairs, if the people are reasonably in control of the party organization at the bottom, if the national organization of parties is firmly based on the local party organizations—then it may be taken for granted that as high a quality of men will be sent to the national assembly as the prestige and authority of that body invites.

The methods by which the legislature holds the chief executive and the administrative departments in check are pretty well standardized throughout the world. Save where constitutional provision interferes, the act of the legislature creates the administrative department, determines much of its internal organization, and fixes many of its procedures. In enacting the laws which determine what the government is to do for the people, the legislature specifies in varying amounts of detail how the departments shall accomplish these purposes. The legislature appropriates money for the maintenance of administrative departments and for their use in achieving the objectives prescribed by law. Ordinarily such grants are hedged about by precautions as to what the money is to be used for and how it is to be paid out. The legislature constantly shouts its dissatisfaction with administration, questions and criticizes, and may carry investigation to the point of thorough exploration and exposure. And finally, it may have the power to remove the other countries by forcing resignation on a vote refusing support—in this country by the little used impeachment method, in many other countries by forcing resignation on a vote refusing support to the government of the day.

An assembly composed of independent, courageous and intelligent men and possessing all of the powers normally enjoyed by a legislative body may still fail to maintain an adequate
control over the executive-administrative branch because not
organized to exercise effectively the powers which it has. This
is generally admitted to be the difficulty in the case of Congress
today. Senators and Representatives are as competent and as
public spirited a group as any nation is likely to get together in
such numbers by any device that might be tried. And the powers
of Congress under the Constitution give it ample authority for
any purpose it could reasonably want to accomplish. But Congress
is not adequately organized to accomplish its purposes. The
apparent shortcomings of this character are enumerated in a
recent careful study by a Committee of The American Political
Science Association, the principal ones being: Congress allows
itself to be tied up with matters of local or special concern which
divert its attention from matters of greater national importance;
it does not maintain a staff adequate to do the investigation and
give it the advice which it requires; it destroys any chance of a
systematic and coordinated attack on questions of public policy
by the way in which it splits up its business and parcels it out to
committees; it does not have good working relations with the
President; and it has not provided itself with adequate facilities
for the continuous inspection and review of administrative
action.\(^1\)

Pusey is the only author in the series being reviewed who
faces up squarely to the importance of the representative assem-
bly to democratic government. His concern that Congress clear
away the debris of practice and attitude that handicaps it in
dealing with modern public problems was noted above. But
Pusey's discussion, no matter how wise, is not detailed enough
to supply a measure of the distance Congress has backed away
from its responsibilities, or to point out the hurdles that have to
be overcome in order to give it the authoritative position that
it ought to have. A much more complete job of this sort is
done in two recent reports on the reorganization of Congress:
The Reorganization of Congress, by a committee of the American
Political Science Association mentioned above, and Strengthening
the Congress, prepared by Robert Heller for The National
Planning Association.\(^2\) About the time these reports appeared,
and perhaps influenced by the fact that they were in preparation,

\(^{17}\) The Reorganization of Congress; A Report of the Committee on Con-
gress of the American Political Science Association, Public Affairs Press
(Washington, 1945).

\(^{18}\) Heller, Strengthening the Congress, National Planning Association
Congress set upon a thorough self-scrutiny of itself and its relation to the great public undertakings that it is to control. The vigor with which its self-investigation is going on, the concern for its more effective operation which so many members of the two houses have revealed, and the encouragement of a more vigorous legislative leadership which has come from so many sources combine to make it appear likely that Congress will rearm itself to assume whatever it believes to be its proper role in the democratic process.  

As Congress finds ways of freeing itself for a full exercise of its powers, it ought, of course, to make up its mind how its powers are to be used. And the people of the nation ought to be making up their minds on the same subject. The importance of this is nowhere more clear than when applied to the relation of Congress to the executive-administrative branch. There is general agreement on the part of those who speak or write on the subject that Congress should have fuller knowledge of what the administrative departments do, and should in some way hold them to account for their actions. There is much less agreement as to how much of a brake Congress should be on the President. And there is nothing approaching agreement concerning the means by which Congress should exert its influence over either the President or the administrative departments.  

As to the relation of Congress to the presidency, I think enough was said for the purposes of this essay in the preceding section dealing with the Relation of the President to Responsible Exercise of Administrative Power.\textsuperscript{19} As to the relation of Congress to the administrative departments, a lot more ought to be said than can be put down here. As far as I can learn, there is no dissent from the proposition that Congress should maintain a firm hand on the allocation of public money to administrative departments by the process of enacting appropriation laws; but there is a great deal of feeling that Congress frequently defeats its own purpose in the particular limitations which it fixes on the way the appropriation may be spent. No one will deny that Congress should determine whether important new departments are to be created; but there will be plenty of argument as to how fully Congress should control the internal structure of the department, as to whether the President should not have a free hand to consolidate and reorganize departments, and even as to whether the President should not bring new agencies into ex-

\textsuperscript{19} Supra p. 320.
istence on his own authority, at least with the expectation that Congress will later approve their existence with whatever modification it may insist upon. No one who claims any respect for democratic government will deny that policies enacted by Congress should determine the nature of the regulation and the service that constitute government of the people; but opinions will differ sharply as to how much detail should be written into the statute and how much authority to render broad policies into working programs should be delegated to the administrative department. And finally, while every one readily acknowledges that Congress should have unlimited power to determine whether its policies are being carried out, students, observers and participants will take innumerable different positions when asked to indicate how much inquiry, suggestion and sharp reprimand Congress may properly subject the administrative department to with respect to its current operations.

A recent book by Mr. Roland Young entitled *This Is Congress* appears to supply the best description of the ways by which Congress lays a controlling hand on the current operations of the administrative department.\(^2\) I understand that Mr. Young is generally sympathetic toward a substantial amount of current congressional supervision of administrative activities. In a recent carefully reasoned article Mr. Pendleton Herring shows how such current control can constitute mere meddling and lead to frustration of virtually everyone concerned, and sets forth clearly why he thinks such congressional activity should be reduced to a minimum.\(^3\) Herring has amply evidenced in this article and in other writings that he is firmly committed to a powerful legislative body as principal guarantor of democratic government. He does not believe that a man can take orders from two bosses without getting into trouble; he thinks that the President can keep the several administrative departments under rein and that Congress can force reasonable accountability upon the President for what they do; he concludes that it is better for Congress to leave to the President the job of directing the administrative branch in its day to day work while Congress devotes itself to problems of public policy which present themselves in broader aspects.

Herring presents an attractive argument. There are enough forces in this world making for confusion in purposes and conflict

\(^2\) Young, *This is Congress* (1943) 182-218, 155-159.
\(^3\) Herring, supra note 16.
in instructions without our definitely inviting more of them. Any arrangement which provides clear directives to our administrative departments and removes all excuse for departing from those directives appears on its face to be a good arrangement. But I can go along with Herring only if I am sure that the President can and will keep the administrative departments in hand and that Congress in turn can keep the President from directing them toward ends which Congress does not approve. Of these things I am not sure, and therefore I am at present unable to accept Herring’s proposal that Congress withdraw from current control of (or interference with) administrative operations.

As I have said earlier in this essay, I think that control of the bureaucracy by the chief executive is much more control by a mass of institutions than control by the President. I am by no means certain that these institutional devices have to respond either to the will of the President or the will of Congress with the readiness that I think desirable. Even if the President were able personally to review and order a change in the conduct of administrative departments, I should want Congress to maintain a close watch on what he does and what they do under his direction.

In theory Congress ought to be able to exert sufficient control over the executive-administrative branch through general legislation, appropriation of money and investigation of alleged abuses of power. But Congress will not know what legislation to enact, how to appropriate intelligently, or when to investigate unless it maintains pretty close contact with administrative departments. If Congressmen get close enough to the bureaucracy to get the information they need for proper legislative action, they are pretty certain to make suggestions as to how the department can do a better job of carrying out the intent of statutes and appropriations. If, as I suspect, the kind of knowledge that will support intelligent legislation can be had only at the cost of some meddling by Congressmen in the day to day operations of the administrative department, I am willing to let the administrator and the bureaucrat bear that cross.

This is not an argument for all of the congressional interposition into administration that goes on today. Too many Congressmen misconceive themselves to be a majority of Congress and virtually order administrative officials to depart from administrative policies that have been worked out with greatest concern for the public interest. Committees of Congress too frequently
forget that they are not two chambers of the legislative body and make demands on the administrative department that it must ignore out of loyalty to a more authoritative expression of congressional will. The safer way for America, as I see it at this time, is to reduce the meddling and regularize the excursions and forays of Congress into the administrative area; not to bar Congress from such activity on a theory of presidential supremacy over administration.

*Can the People Control the Bureaucracy by Direct Action?*

The emphasis of this essay to this point has been on the things that bureaucrats can do to thwart the public will, and on the measures that we may take to circumvent their evil deeds. Our system of democracy would be a dismal failure if it produced an administrative personnel which we suspected of having a conscious intention to destroy the liberties of the people. The fact is, of course, that ordinarily the bureaucracy is doing just what we expect it to be doing. Instead of trying to thwart the public will, it is seeking earnestly to carry out the mandate of Congress and trying to please everybody. And it is behaving in this way because responsible officials want to do the right thing, not because of the imminent prospect of reprimand by the President or exposure by Congress.

The eagerness with which a department seeks to please the public undoubtedly depends in large part on the intimacy of its contact with the segment of the public affected by its action. It's a lot easier to be arrogant to people you never see than to individuals who may toss it back in your face; and most of us will be slow to shortchange a man out of his legal rights if we know he'll be back tomorrow with a bunch of his neighbors who suspect they may be next in line for such treatment. In order to make sure that the bureaucrat has to look at and listen to the public that he governs, we move in on him from front and rear. We provide by law that he must consult with the governed in one way or another, and the governed band together in organizations to run him down if he seeks to evade them through any loophole in the law.

The nature of special interest or pressure groups and the ways by which they seek to influence public officials are pretty well known and, in view of the necessary brevity of this essay, need not be discussed here. There is space for little more than identification of the arrangements prescribed by law or volun-
tarily adopted, by which we seek assurance that the administrative branch will find out what the public wants and take it into account in executing the law. The more important of these arrangements are: (a) the appointment of leaders (political, civic, industrial, etc.) to official positions; (b) hearings on proposed action; (c) attitude and opinion polls, and popular referenda; and (d) official representation of interest groups.

The Appointment of Leaders to Administrative Positions. This is probably the oldest and undoubtedly the most dependable device for making sure that the administrative department will voluntarily seek to use its authority in accord with the public interest. In a democratic system like ours, the victory of a party in the national election is followed by the appointment of leaders of that party to cabinet positions and to other high offices in the administrative branch. This creates a strong presumption that the administrative departments will faithfully follow the instructions of the new administration, whose judgment as to what the people want the government to do is the most accurate expression of the will of the electorate.

We depend on the appointment of leaders to high offices for other purposes than that of securing loyalty to the party program. When we wish an expression of national unity, as during the late war, leaders of the opposite political party will be lifted to high office, thus assuring all parts of the population that the dominant party is not running things for its exclusive benefit. In order to satisfy labor that the government is not stacked against it, persons with known sympathy for labor if not definitely identified as labor leaders, go into many of the top positions in the Labor Department and its associated boards. For the same reasons persons with agricultural interests go into the Department of Agriculture and men of reputation in business, industry and finance go into top positions in such departments and agencies as Treasury, Federal Reserve Board, and Reconstruction Finance Corporation.

A wide distribution throughout the administrative service of men who have risen to prominence by demonstrating their right to public confidence is one of the strongest guarantees that the bureaucracy will be sensitive to the wishes of the people and that the chief executive, in his innermost councils, will constantly be reminded of his promises to the people. Whenever the chief executive fills the most important posts of the government with men of secondary stature in the eyes of the nation
it can be concluded that he is bent on an organization dominated by personal loyalty to him or to the boss or clique that gives him his orders.

Hearings. A department with any substantial power to disturb the rights of the people or upset their expectations, soon learns to take the people into its confidence. Public acquiescence is more likely to be won when the people are prepared for the administrative decision than when it comes as a surprise. Realization of this fact leads to queries about public satisfaction with existing policies, consultation concerning proposed orders, and sometimes submission of alternative proposals for expressions of preference.

It has long been the custom to require a formal hearing in cases where the action of the administrative officer determines an individual’s rights under the law. The practice has been found so satisfactory that it has been extended by voluntary action of the administrator and by law to many situations bearing little resemblance to a judicial case. The Federal Communications Commission, for instance, during the current year invited the industry and the interested public to express themselves as to whether all television broadcasting should be pushed up into the higher frequencies or stay “downstairs” where it has been operating in the experimental stage. Public hearings on proposed rules and regulations, the exception a few decades ago, is fast becoming the customary procedure in both state and national government.

The utilization of hearings as a general practice is sometimes opposed on the ground that the hearing enables an active segment of the interested public (large industries, for instance) to get together with the administrative department on a plan of action that a much greater part of the public would oppose if it knew what was up. It is also said that hearings lead to departures from the central policy which the administration has committed itself to, and that this is a thing to be deplored. Neither of these objections seems to me to challenge the hearing as an aid in formulating public policy. Certainly an administrative official who is crooked or biased will use the hearing, as he will use other devices, to accomplish his purposes; but the open hearing will put a stop to more of this sort of thing than it will encourage. And public policies that will not stand up against the evidence and argument that a hearing brings to light are public policies that ought to be revised anyway.
Attitude and Opinion Polls and Popular Referenda. The hearing has two very important limitations as a device for advising the administrative official as to what he should do. Only a small part of the interested public will or can attend the hearing, and you can't well call a hearing until you have a pretty concrete proposal to argue about. A device that will carry questions to people of every shade of interest and get their judgment on issues before the cards are stacked for one solution or another, ought to be of great utility in making our government what the people in their sober moments really want it to be. Polls conducted by private enterprise, such as the Gallup poll, may supply the administrative official with considerable useful information, but cannot be depended on to give him what he wants when he needs it. The Department of Agriculture has accordingly set up a unit to find out what the farmers and other people with agricultural interests want in the way of agricultural policy, and how they react to action taken by the department. This undertaking has been opposed by some Congressmen on the ground that it sets up the administrative department as a rival of Congress in determining what kind of government the people want. The point seems ill-taken to me. Congressmen should be the final authority as to what policies the people want, and they should have a good polling system at their command to supplement their ear-to-the-ground findings. But as long as Congress continues to delegate important discretionary powers to the administrative departments, it should rejoice that the department makes a conscientious and systematic effort to find out what the people want it to do.

The popular referendum is utilized in a number of states to permit the people to determine finally whether they want a proposed law to go into effect. This device has been adapted in recent years to proposals for administrative action, at least in the fields of labor relations and agricultural controls. By requirement of law, many of the acts of authorities charged with settlement of labor difficulties depend on decisions made by labor in a carefully supervised election. Under federal agricultural legislation, the determination as to whether crop quotas shall go into effect are determined by the vote of farmers who produce that crop. This kind of appeal to the wish and the wisdom of the governed offers a route to better government in many fields of public affairs. Where the issue is clearcut and the people who are affected know where their interest lies, the referendum
should prove to be an important feature of democratic government.

Official Representation of Interest Groups. Something was said above about the wisdom of appointing to high places in an administrative department individuals who enjoy the confidence of the part of the population that will be most affected by the department's action. Ordinarily this gives us a pretty good assurance that the official understands the particular governmental problems that are involved, but to make sure of this we frequently provide by law that a number of those high officials shall be drawn directly from the ranks of the population which has most at stake. As an illustration, during the agricultural hard times of around 1920, farm bloc Congressmen forced into the Federal Reserve Act a requirement (since repealed) that at least one member of the Federal Reserve Board be a farmer or a person with other definite agricultural interests. There are many requirements like this in federal and state law, but we have shown an increasing tendency in recent years to go much further than this by providing that the organizations which best represent particular interest groups shall designate persons to serve on advisory councils, submit panels from which members of boards and other officials shall be chosen, and in some instances even designate the official who shall hold the public office.

After a careful study of experience with various devices for representation of interest groups, Mr. Avery Leiserson concludes that it is not sound policy to make up an administrative board (i.e., a board that has authority to issue orders) of representatives of different interest groups. On the other hand, designation of such representatives to advisory councils has been a very satisfactory experiment. The availability of such bodies to offer counsel and criticism constitutes a major assurance that the exercise of administrative power will be in the public interest. We could hardly have administered our wartime controls without a multitude of such advisory bodies attached to the War Production Board, OPA, the Petroleum Administrator for War and other control agencies.

23. Three major experiments in developing public policy through direct participation of the governed, each now terminated or in suspense, should be mentioned. In 1919 the Federal Trade Commission began a practice of calling together representatives of the individuals and firms engaged in particular kinds of business and industry, for the purpose of drafting codes of fair practice which would govern the competitive practices of the participants. Sev-
In 1936 Mr. E. Pendleton Herring published a book entitled *Public Administration and the Public Interest* which explored the relations between interest groups and the principal administrative departments of the national government and made many thoughtful comments about the significance of these relations for democratic government. It is interesting that only one of the authors under review found worthy of even casual comment a subject so important to democratic government and one to which Herring devoted a very substantial volume. It is particularly surprising that Appleby should have passed this matter by, since he was for many years in the Department of Agriculture when it was making extensive use of planning committees, advisory councils, polls and referenda.  

Kingsley is the only author in the group who gives any attention to the contacts between the bureaucracy and the people they serve. His *Representative Bureaucracy* traces the history of the British civil service from the thirteenth century to the present with the primary purpose of observing the relation between the people who possess wealth and power generally and the people who hold the jobs in the government service. As one would expect, at a time when wealth, political power and other evidences of special advantage were concentrated in families (the nobility and the near noble), the important posts in the government service went to members, friends and supporters of those families. As a middle class came to power in the economy and politics of the nation, middle class people pushed into...
the public service. But conquest of the administrative branch comes late in the advance to power. It was not until sometime after Parliament was reformed by the extension of the suffrage in 1832 that the middle class made any important inroads in the public service. For a couple of decades after that date, Kingsley says, "There remained, to be sure, a considerable aristocratic residue and entrance to the Service continued to be a matter of connection and influence; a fact which effectively closed the door to the great bulk of families, and created a reservoir of dissatisfaction which ultimately overflowed and swept the whole system away."²⁵

Now in our own time the British people have elevated to power a Labor Party which is presumably much more to the left than any party we are likely to turn our government over to for some time in the future. It is perfectly clear that that party will not be able to get its sons and daughters into the civil service until it has had time at least to tear down the system of qualifications and examinations for entrance into the service; and probably the working class will not get control of a very substantial proportion of the more responsible positions until a whole new system of public supported education is in effect.

Today the positions in the British civil service that are not of a highly technical or professional character (such as those requiring training, in medicine or law) are divided into three principal classes: Clerical, Executive and Administrative. To get into the Clerical Class of position, a boy or girl must have completed the elementary schools and be well along in the secondary schools; yet only about one of every ten children who enter the elementary schools gets into the secondary schools at all (compared to one out of two in the United States). The next higher general class of positions (the Executive Class) requires completion of the secondary schools; Kingsley does not indicate what proportion of British children finish the secondary schools but it must be very small. The highest general grade of the service is the Administrative Class. To get into this class a young man (very few women are admitted) must be a graduate of a university. But only one youth out of one hundred forty-five who start their education in the elementary schools finally gets into a university (as compared with one in ten in the United States). Further evidence supplied by Kingsley shows that most of the individuals who finally get into this highest class of service

²⁵ Kingsley, op. cit. supra note 1, at 56.
came up by way of secondary schools and universities that educate very few who are not sons of the wealthy.

Summarizing all of this Kingsley says, "Because equality of educational opportunity does not exist in England, the fact that the Service classes are linked to various rungs of the educational ladder means that each is drawn pretty largely from a distinct stratum of society. ... To a remarkable degree each Service class is also a social class—a caste—and the Service hierarchy pretty accurately mirrors the economic and social hierarchies outside." 26

In a chapter bearing the subtitle, "The Shape of the Responsible Managerial State," Kingsley argues that the wish and the ability of the bureaucracy to fulfill the will of the people depends on the extent to which the bureaucracy is in sympathy with the purposes which underlie the policies of the nation. When the upper middle classes of Great Britain dominated Parliament and passed the nation's laws, a civil service drawn from the same classes could and did loyally serve its masters and faithfully execute the laws of the land. But when the purposes of the nation change, as presumably they will under a Labor Party Government, a bureaucracy dominated by the upper middle class, Kingsley believes, cannot possibly have a point of view and a body of convictions that will enable it to carry out the new policies effectively and in good faith. Either the Labor Party must find a way of reconstituting the civil service, or it will find its program sabotaged and scuttled at the level of administrative execution.

This is an interesting thesis and one which I have no doubt can be fully supported by the history of administration in Great Britain. Undoubtedly Kingsley's conviction of this point grows out of his study of British experience. It should be noted, however, that the facts about the composition and organization of the British Civil Service which make up the bulk of Kingsley's book, while they reveal clearly the class composition of the civil service, do not really provide any substantial evidence that a class dominated civil service shows any favoritism for its own class or is unable to execute faithfully laws that are designed for the benefit of another class. A study designed to explore that matter thoroughly would be of greatest utility in advancing our study of democratic government; and I know of no person more

26. Id. at 145.
capable than Kingsley of doing the job as it ought to be done. *Can the Government Get Too Big to Be Controlled?*

Democracy was described at the beginning of this essay as a system of government in which the people control the individuals who have political power. If a government can get so big or so powerful that the people are no longer able to control the individuals who make up that government, then that government has ceased to be a democracy.

An effort has been made throughout this essay to point out the things the bureaucracy can do that limit the ability of the citizen to make free judgments on political questions; the power of the administrative department to release or withhold information about its own activities is an illustration. If the President throws his power and prestige on the side of the bureaucracy in an effort to hoodwink or coerce the citizen, then the chance for the individual to form critical judgments is further reduced. The legislative assembly, chosen by separate constituencies throughout the nation, is the citizen's ultimate hope, both for information as to what is going on in the government and for defense against the oppression of those who are in power. If the members of the legislative body also get incorporated into a gigantic political organism and become an arm of an octopus that is reaching out in many directions to strangle the citizen, then the nation indeed loses its assurance that the people will control the government.

Some persons will assert their independence and express their opinions on political questions until they are closed up by physical force. Most of us can be closed up, or at least toned down, by an immediate danger of losing our economic income. Under capitalism we have to date felt sure that the government does not to any important degree control our economic livelihood. We have accordingly not been afraid to criticize our political leaders and our public officials; and we have had a vigorous democracy. The businessman, the farmer, labor, Wall Street have all opposed this administration or that; economic power under capitalism stands forth to oppose political power.

As the government grows in its authority and does more and more for the individual, the sense of freedom to oppose those who are in control of the government dwindles away. Workers who are on relief tend to become supporters of the administration that is supporting them. When farmers expect loans from the government they think twice before they offend the official who
will pass on the loans. When businessmen want their businesses underwritten by the government, they tend to become non-political. These are the things that happen as a nation moves into socialism.

Can a nation find a way of preserving political freedom for the individual under a socialist program? If political power comes to include virtually all economic power, can separate pockets of power be maintained which can in comparative safety and with hope of success oppose the individuals who sit on top of the great pile of political-economic power? These are questions that America must answer if it persists in moving towards socialism and wants to do so without abandoning its democracy.

We have some devices which offer some hope. Under our federal system, the forty-eight states have considerable authority; men who control the state governments have an amount of power in their hands which will enable the courageous ones to stand out against Washington. If we are willing to establish governments worthy of exercising the range of authority that the states once possessed, we might even turn more power back to the states. If we are willing to build more responsible local government, we can lodge more authority in these units, with a resultant increase in the safety for men who will stand on their convictions in political affairs. We can even plan the fragmentation of power within the national government. Much of the regulatory authority of the national government is today parcelled out to commissions that maintain a substantial independence of the President and the political party currently in control of the government. This system of independent trustee-ships can be continued and extended.

Any proposal to fragmentize the control of the current program of the government runs contrary to the dominant theory of the political scientists of this country. For a decade, at least, they have insisted that the welfare of the people depends on the integration of all governmental authority of the national government under the immediate direction of the president. Further, if I read them right, they present almost a solid front for the passage of authority over questions of nationwide concern from the states and local governments up to the government in Washington. In my personal opinion, such a movement towards centralization when connected with a march toward socialism, may well lead to the immediate loss of the people's control over their political and economic destiny.

If I judge correctly from the tone of their writing, Appleby
is confident that we can organize the socialist state under democratic management, and Kingsley looks with pleasure on the prospect that we may have an opportunity to prove that we can do so. It may be that I wrongly interpret Appleby and Kingsley; I do not mistake von Mises and Hayek. The latter two believe that the reconciliation of socialism with democracy is not possible. The men who wrote our federal constitution, says von Mises in his *Bureaucracy*, “would have easily understood that government control of business is ultimately incompatible with any form of constitutional and democratic government. It is not an accident,” he continues, “that socialist countries are ruled in a dictatorial way. Totalitarianism and government by the people are irreconcilable. . . . Under government control of business, parliaments cannot be anything else than assemblies of yes men.”

This is a charge of most serious moment if it can be supported by fact or reason, and Appleby and Kingsley and you and I should thoroughly search our souls and painfully restudy all the evidences before again supposing that we can find enough freedom of individual action in a socialized economy to support a democratic political structure. But von Mises does not produce even the little bit of fact and reason necessary to establish a presumption in favor of his warning. As best I can determine what the body of his book is about, he has developed a proposition (a purely academic one to my mind) that people who work for profit have a basis for deciding what they have accomplished (i. e., they know whether they are making profits or not) but people who do not work for profit, like a government official or the manager of a hospital, do not have any way of knowing whether they are operating efficiently or achieving what they want to achieve. In the latter case, according to von Mises, the undertaking is bureaucratic. “Bureaucratic management is the method applied in the conduct of administrative affairs the result of which has no cash value on the market. Remember: we do not say that a successful handling of public affairs has no value, but that it has no price on the market, that its value cannot be realized in a market transaction and consequently cannot be expressed in terms of money. . . . Bureaucratic management is management of affairs which cannot be checked by economic calculation.”

27. von Mises, op. cit. supra note 1, at 8.
28. Id. at 47-48.
As far as I know there is no copyright on the word "bureaucracy" and Mr. von Mises has a right to define it in this way if he wants to. But I would not have gone to the trouble to read his book if I had known that that was all he had to say; and I may say that after reading it very carefully and then checking through some of my marginal notations I do not find anything more in it than that. The book may even be positively harmful if it causes people to suppose there is nothing to be said in support of the proposition that democracy and socialism are incompatible.

It is unfortunate that before von Mises' book could have circulated widely enough to have done much damage, Mr. Hayek gave us a book, The Road to Serfdom, that misses few of the angles in telling us that we cannot have socialism and have democracy at the same time. Hayek's book is as comprehensive as that of von Mises is fragmentary; it is as profound as that of von Mises is trivial.

The Road to Serfdom is founded on a firm faith in capitalism, and an utter horror of the cruelty done in the name of socialism in Nazi Germany. Like von Mises, the people we call orthodox economists, and most businessmen, Hayek believes that the decisions people make when they buy and sell goods supply the best evidence of what they really value and want the economic system to produce. Hayek does not believe that we could have a system of buying and selling under socialism that would register free decisions of the people as to what they want, and therefore serve as a reliable guide as to what should be produced. And he does not believe that we can find a substitute for the market, such as surveys and polls, that would give us the same information about what the people really want.

Because Hayek is so moved by his observation of events in Nazi Europe, his book has been called hysterical. If it is hysterical, it is so only in the sense that the author may have been unduly scared by what happened in Europe. There is nothing hysterical in the arrangement of words into sentences and paragraphs. Indeed, I should say that the author has selected and put together words with extreme care to convey the exact idea that he wants to establish. I do not see how he could be charged with inviting the reader to misunderstand, underestimate or exaggerate what he says; in this sense, the book seems to me to be a masterpiece.

Hayek is not against all forms of government control of busi-
ness, as von Mises so loudly declares himself to be. Government, according to Hayek, should and must police the economic system sufficiently to make sure that the market is free, to make sure that there is genuine and not merely an appearance of competition in the production and exchange of goods and services. And he enumerates other measures which the people should take through government to guarantee that individual men will have freedom to learn, to think and to act as men must in a democratic system. In a competitive economy, properly policed by a democratic government, no one acquires enough power over the population at large to keep men from expressing free judgments.

As long as men believe in capitalist economy and democratic government and insist on a proper balance between the two, Hayek argues, their economy will supply their material and cultural wants and government will keep that economic system healthy. If, however, government gets out of its proper role it must resort to the judgment of legislators and bureaucrats for the decisions that the people should make in the market place. These officials have no way of knowing what the people really want, so they make decisions concerning what shall be produced and how it shall be distributed which of necessity deny to some people the things they most value. The dissenters will start to kick and demand exceptions to the plan; the planners of the economy will insist that their decisions must stand or the whole idea of the plan must be thrown out; the people must then choose between standing by socialism or going back to capitalism; if they stand by socialism and make the plan stick, then coercion has to be applied to the dissenters; as coercion is applied to more and more men, the freedom which they once had is gone, and they lose their ability to register their political judgments.

This recapitulation of Hayek's argument is too greatly simplified to do him justice, especially in view of the great care with which he developed his case. While I admire his presentation exceedingly, it does not convince me. I am not certain that surveys and polls cannot be devised which will give us reliable information as to what the people want the economy to produce. And I am not certain that it is impossible to set up political controls which will assure the people information sufficient to support independent judgments and enable them both to express their disagreement with the planners and to turn out of power the individuals they have put in high places.

While I do not think that Hayek has so established his case
that skeptics have to agree with him, I nevertheless think that he has thrown the burden of proof over upon those who would argue for socialism. I am certain that there is nothing in the literature produced by political scientists and I doubt that there is anything in the writing of the economists that makes a better case for the reconciliation of socialism with democracy than Hayek here makes for their incompatibility.

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The purpose of this essay, declared in the opening paragraphs, is to assist the reader to decide where the more serious attacks on our democratic system of government are likely to be made, so that he can be prepared for his part in the defense. I have not identified every kind of attack that we must anticipate. I hope I have pointed out enough danger points to remove some of the excuse for firing aimlessly in the air as so many of us have been doing for so long.