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BUREAUCRACY AND CONSTITUTIONALISM

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There is an old aphorism that fire is a good servant but a bad master. Something like this aphorism is frequently applied to the appropriate role of the bureaucracy in government. Because bureaucracy is often viewed as tainted with an ineradicable lust for power, it is alleged that, like fire, it needs constant control to prevent its erupting from beneficent servitude into dangerous and tyrannical mastery.

The folklore of constitutional theory relegates the bureaucracy to somewhat the same low but necessary estate as Plato does the appetitive element of the soul. In the conventional dichotomy between policy and administration, administration is the Aristotelian slave, properly an instrument of action for the will of another, capable of receiving the commands of reason but incapable of reasoning. The amoral concept of administrative neutrality is the natural complement of the concept of bureaucracy as instrument; for according to this view the seat of reason and conscience resides in the legislature, whatever grudging concession may be made to the claims of the political executive, and a major, if not the major, task of constitutionalism is the maintenance of the supremacy of the legislature over the bureaucracy. The latter's sole constitutional role is one of neutral docility to the wishes of the day's legislative majority.

The source of this doctrine is found in part in a reading of English constitutional history and in part in the political metaphysics of John Locke. The drama of English constitutional development may be seen as first the concentration of power in the Norman kings, with the suppression of feudal anarchy, and then the gradual attainment of parliamentary supremacy. Because the bureaucracy was created by the kings as an instrument of national unification, it became identified with them and was envisaged as a monarchical rather than a popular element, and one which required control. At a later date the class monopoly of the upper hierarchy of the civil service reinforced liberal suspicions of the bureaucracy, and it seemed especially clear that the most bureaucratic part of the bureaucracy, the military, had to be placed firmly under civilian, i.e., legislative, control.

John Locke, writing the apologia for the Glorious Revolution and its accompanying shift in political power, held that "there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate. . . ." ¹ To be sure, Locke conceived of the legislature only as the fiduciary of the people, from whom all legitimate power ultimately stemmed. But since the legislature was considered the authentic voice of the people changeable only by revolution, this limitation could be forgotten in practice. Despite Locke's qualifications, the latter-day exponents of his views have given cur-

¹ John Locke, *The Second Treatise of Civil Government and A Letter concerning Toleration* (Oxford, 1947), Ch. 8, p. 87,

rency to what Jackson called the "absurd doctrine that the legislature is the people." Professor Charles Hyneman, accepting the majority will metaphysics of Willmoore Kendall, has ably expounded the consequence of that point of view in his recent *Bureaucracy in a Democracy*. It is his position that in a democracy the people should get what they want, and that what the legislature wants is the best approximation of what the people want; ergo, we should fashion our institutions for legislative supremacy, at least with respect to the bureaucracy.² Hyneman's position is extreme but not substantially different from others who argue that Congress is our board of directors. Even Paul Appleby reflects at times the conventional bureaucratic homage to Congress, though his central position rejects the claim of any single organ to monopolize the democratic process.³ Acceptance of the principle of legislative supremacy by practicing administrators is, of course, more a counsel of expediency than an article of faith. It pays for the administrator to call Congress our board of directors, whatever his private conviction may be.

Unfortunately for the simplicity of the theory that democracy means giving the people what they want and that this means giving the legislature what it wants, the legislature is divided into two branches and the President is an independently elected official. In case of conflict between any or all of these, who should be supreme as the authentic representative of what the people want? Professor Hyneman has his uneasy moments between President and legislature. Realism compels some doubts as to the validity of the voice of congressional committees, and closer examination bogs the theory down in exceptions and qualifications.

The will of the people, like sovereignty, is regarded as a metaphysical first principle, supplying an absolute from which certain consequences can be deduced. Yet to possess meaning in political analysis, the concept must be defined in operational terms. How do you discover what the people want? The mode of consultation can make a world of difference. At various times President, Senate, House, Supreme Court, Dr. Gallup, and a host of other agents and agencies have claimed a special ability to express the people's will. The Achilles heel of Rousseau's *volonté generale* was that it had to find a voice, and his solutions ranged from enlightened dictatorship to counting the votes. The will of the people in Professor Elliott's sense is the democratic myth, and in Mosca's the political formula. It serves as a symbol to legitimize the acts of any group that can successfully identify itself with it in the public mind. Properly understood, it probably should be treated as a value symbol of our political culture, an object for investigation involving a political process—and not a principle from which we can logically excogitate the appropriate role of bureaucracy.

² See Part 1 of *Bureaucracy in a Democracy* (New York 1950). For a penetrating but sympathetic criticism of Hyneman's views, see Chester I. Barnard's review of the book in *AMERICAN POLITICAL SCIENCE REVIEW*, Vol. 44, pp. 990-1004 (Dec., 1950).

³ For Appleby's central position, see Ch. 16 of his *Big Democracy* (New York, 1945) and p. 164 of his *Policy and Administration* (University, Alabama, 1949).

Dissatisfaction with the view of bureaucracy as instrument and Caliban has grown among students of government as first-hand experience in government and historical research have undermined accepted dogma. Professor C. J. Friedrich has pointed to the beneficent role of bureaucracy as the core of modern government.⁴ Dr. Fritz Morstein Marx has described the vital role of the Prussian bureaucracy in developing the *Rechtsstaat*.⁵ The studies of Pendleton Herring, John M. Gaus and Leon O. Wolcott, Arthur W. MacMahon and John D. Millett have illustrated the genuinely representative part played by the bureaucracy in American government.⁶ And in a widely used text Professor J. A. Corry has not hesitated to refer to administration as the mainspring of government and to the administrative, as distinguished from the political, executive as a fourth branch of government. An assessment of the vital role of bureaucracy in the working American constitution seems to be overdue.

The most ardent advocate of legislative supremacy can no longer blink the fact of administrative discretion and even administrative legislation. Nor does any one seriously suppose that the clock can be turned back. Improvement there may be in the capacity and willingness of the legislature to exercise general policy superintendence, but anything approaching the conditions necessary to achieve a separation of policy from administration is highly doubtful. The bureaucracy is in policy, and major policy, to stay; in fact, barring the unlikely development of strong majority party legislative leadership, the bureaucracy is likely, day in and day out, to be our main source of policy initiative.⁷ The role of the legislature and of the political executive may come to consist largely of encouraging, discouraging and passing on policy which wells up from the agencies of administration. All of this is because the bureaucracy is not just an instrument to carry out a will formed by the elected Congress and President. It is itself a medium for registering the diverse wills that make up the people's will and for transmuting them into responsible proposals for public policy.

Growth in the power of the bureaucracy is looked upon as a menace to constitutionalism. By some it is seen as a dangerous enhancement of the power of the President, by others as an alarming accretion of power to a non-elective part of the government. The logic of *either-or* sees a cumulative process in which the supremacy of the elected legislative is replaced by the supremacy of an appointed bureaucracy. Given the alternative, the choice of the supremacy of an elected legislature would be clear, but that choice is an unreal bogey. To meet our needs, we have worked out a complex system in which the bureauc-

⁴ *Constitutional Government and Democracy*, rev. ed. (Boston, 1950), Ch. 2.

⁵ "Civil Service in Germany," in *Civil Service Abroad* (New York, 1935).

⁶ Pendleton Herring, *Public Administration and the Public Interest* (New York, 1936); J. M. Gaus and L. O. Wolcott, *Public Administration and the United States Department of Agriculture* (Chicago, 1940); A. W. MacMahon and J. D. Millett, *Federal Administrators; A Biographical Approach to the Problem of Departmental Management* (New York, 1939).

⁷ Cf. George B. Galloway, *Congress at the Cross Roads* (New York 1946), pp. 150-151; Roland A. Young, *This Is Congress* (New York, 1943), Ch. 2.

racy and legislature perform complementary and interlocking functions.⁸ Both are necessary, and the supremacy of either would be a constitutional misfortune. We sometimes forget that the authors of the *Federalist* and Jefferson alike were aware of the danger of legislative tyranny.

Professor Friedrich and others have argued that the essence of constitutionalism is the division of power in such a way as to provide a system of effective regularized restraints upon governmental action.⁹ The purpose of this division of power is not to create some mechanical equipoise among the organs of government but so to represent the diversity of the community that its own pluralism is reflected in a pluralism within the government. As Mosca has well said, "the only demand that is important, and possible, to make of a political system is that all social values shall have a part in it, and that it shall find a place for all who possess any of the qualities which determine what prestige and what influence an individual, or a class, is to have."¹⁰ Now it is extremely clear that our Congress fails to do this and that the bureaucracy in considerable measure compensates for its deficiency. Important and vital interests in the United States are unrepresented, underrepresented, or malrepresented in Congress. These interests receive more effective and more responsible representation through administrative channels than through the legislature.

In considerable part this is due to the nature of the presidency and its constituency. Responsible behavior in the sense of sensitivity to long-range and broad considerations, the totality of interests affected, and the utilization of expert knowledge by procedures that ensure a systematic collection and analysis of relevant facts, is more characteristic of the executive than of Congress. Despite the exceptions, and there are many, this kind of responsible behavior is more expected, more politically feasible, and more frequently practiced in the administrative branch. The bureaucracy headed by the presidency is both compelled and encouraged to respond to, and even to assist in the development of broad publics (e.g., the public for Ewing's Health Insurance Program); but broad publics seldom emanate from the organization and the geographic concentration necessary for effectiveness in the congressional committee process. The public's conception of the President as national leader creates an expectation as to his role that differs markedly from any stereotype of Congress or Congressman. This general conception of the presidency not only imposes itself on the incumbent of the office, enforcing a degree of responsibility for playing a national part, but also provides the political means for its performance by organizing a nationwide public. As one President has remarked, the presidency is the best pulpit in the land. It has a nation for its congregation. But what is important here is the expectation that the President should offer a national and party program which provides a degree of synthesis for the agencies of administration. Imperfectly effective as are the organs of coordination—

⁸ Appleby, *Policy and Administration*, Ch. 2. ⁹ Friedrich, Ch. 1.

¹⁰ Gaetano Mosca, *The Ruling Class*, trans. Hannah D. Kahn, ed. Arthur Livingston (New York, 1939), p. 258.

Cabinet, Bureau of the Budget, National Security Council, inter-Departmental committees, and the rest—they are far more effective at ensuring integration than is even the well-disciplined House Appropriations Committee, with its stubbornly fragmented procedures.

In addition to the broader constituency represented by the presidency and the national concern imposed by this office on the subordinate agencies of administration, there is another factor to account for the vital role of these agencies in supplementing congressional representation. It is simply that the shield of presidential power permits the development of the agencies of administration into institutions to mediate between the narrow and the broad interests at work in the subject matter of their concern. The presidency provides a balancing power that permits and sustains a perspective which the overwhelming concentration of narrow interests in the congressional subject matter committee makes difficult in the legislative process. Representation of consumer interests in the Bureau of Agricultural Economics, for example, depends upon presidential protection. Under this same shelter, agencies may develop organizational codes, stereotyped in public expectations, that permit the continuance of broader representation and encourage responsibility in the range and manner in which problems are considered and solutions sought.

To the modern student of government, Aristotle's characterization of an election as an oligarchical device always comes somewhat as a shock. Nonetheless, its implications for representative democracy are significant. If one were to set forth in law the facts of life of the American Congress, it would appear that, to be eligible, overwhelmingly a candidate had first to be in the upper upper-income bracket or second, either personally or through his associates, to be able to command substantial sums of money.¹¹ Expressed as custom, such conditions are passed over save for the carping criticism of Marxists; yet if they were expressed in law, they would clearly characterize our constitution as oligarchic.

While the Jacksonian conception of the civil service as a domain for the common man was not expressly designed as a balance to the inevitably oligarchical aspects of an elected legislature, it has been influential in that direction. Accustomed as we are to the identification of election with both representation and democracy, it seems strange at first to consider that the non-elected civil service may be both more representative of the country and more democratic in its composition than the Congress.

As it operates in the civil service, the recruitment process brings into federal employment and positions of national power, persons whose previous affiliations, training, and background cause them to conceive of themselves as representing constituencies that are relatively uninfluential in Congress. These constituencies, like that of the presidency, are in the aggregate numerically

¹¹ Galloway, pp. 28 ff.; Young, pp. 173 ff.; F. A. Ogg and P. O. Ray, *Introduction to American Government*, 9th ed. (New York, 1948), pp. 304–305; and M. M. McKinney, "The Personnel of the Seventy-seventh Congress," *AMERICAN POLITICAL SCIENCE REVIEW* Vol. 36, pp. 67–75 (Feb., 1942).

very large; and in speaking for them as self-appointed, or frequently actually appointed, representatives, the bureaucrats fill in the deficiencies of the process of representation in the legislature. The importance of this representation lies not only in offsetting such defects as rural overrepresentation, the self-contained district, and other vagaries of our system of nominations that leave many without a voice, but in the qualitative representation of science, the professions, the institutions of learning, and the conscience of society as it is expressed in churches, civil liberties groups, and a host of others.

The democratic character of the civil service stems from its origin, income level, and associations. The process of selection of the civil service, its contacts, milieu, and income level after induction make the civil service as a body a better sample of the mass of the people than Congress. Lacking a caste system to wall them off from their fellows, the members of this sample are likely to be more responsive to the desires and needs of the broad public than a highly selected slice whose responsiveness is enforced by a mechanism of elections that frequently places more power in the hands of campaign-backers than voters. Furthermore, it is unlikely that any overhauling of our system of representation in Congress will remove the need for supplementary representation through the bureaucracy. The working interaction of President, Congress, courts, and the administrative branch makes the constitutional system a going concern—not the legal supremacy of anyone of them.

Given the seemingly inevitable growth in the power of the bureaucracy through administrative discretion and administrative law, it is of critical importance that the bureaucracy be both representative and democratic in composition and ethos. Its internal structuring may be as important for constitutional functioning as any theoretical or practicable legislative supremacy. That wonder of modern times, the standing army possessed of a near-monopoly of force yet tamely obedient to the civil power, is a prime example of the efficacy of a balance of social forces as a means to neutralization as a political force. A similar representation of the pluralism of our society in the vitals of the bureaucracy insures its constitutional behavior and political equilibrium.

It is not by any means sure that the people think that what they want is the same as what Congress wants. In fact, there is considerable evidence that the ordinary man views Congressmen, if not Congress as an institution, with considerable skepticism. The retort that the people elected the Congress falls somewhat wide of the mark. Given the system of parties and primaries, rural overrepresentation, seniority rule, interest-dominated committees, and all the devices that give potent minorities a disproportionate say, it should occasion no surprise if Congress' claim exclusively to voice what the people want be taken with reservations.¹² Skepticism of the exclusiveness of the claim, however, is no

¹² Cf. Barnard, *op. cit.* (above, n. 2), p. 1004, and James MacGregor Burns, *Congress on Trial* (New York, 1949). Hyneman is aware of these misgivings; "If there is widespread and serious doubt that Congress can make the major decisions—including the decision as to what authority the President shall have—in a way that the American people as a whole will find acceptable, then we had better get busy with the improvement of our political

warrant for denying the vital contribution of the representative legislature to the maintenance of constitutionalism. Without it bureaucratic absolutism would be well-nigh unavoidable.

If one rejects the view that election is the *sine qua non* of representation, the bureaucracy now has a very real claim to be considered much more representative of the American people in its composition than the Congress. This is not merely the case with respect to the class structure of the country but, equally significantly, with respect to the learned groups, skills, economic interests, races, nationalities, and religions. The rich diversity that makes up the United States is better represented in its civil service than anywhere else.

While it has distressed those who see in the bureaucracy merely an efficient instrument for executing policy framed elsewhere, its persistent refusal to block the path of the common man by educational qualifications beyond the reach of the poor has made the civil service a democratic *carrière ouverte aux talents*. Like Napoleon's soldiers, the humble clerk carries a marshals' baton in his knapsack. And the open avenue of opportunity in the government has meant much in providing substance to the forms of democracy. At a time when administration has become a towering fact, the significance of our recruitment process for a democratic and representative bureaucracy over-shadows an academic preoccupation with the objective of a merely technical proficiency. One has only to consider seriously the role of bureaucracy as formulator of the bulk of the policy alternatives for legislature and political executive alike—as rule-maker-in-chief—to recognize that representativeness must be a prime consideration in the recruitment process.

It can hardly be denied that, despite the attempt to achieve it by the recruitment process, representativeness in the agencies of government is seriously inadequate.¹³ The capture of commissions such as the I.C.C. by the regulated interests has often been charged, not without persuasive evidence. In his pioneering work, *Public Administration and the Public Interest*, Pendleton Herring has documented the problem. Yet however crassly one-sided an agency of government may become, few indeed will be found so completely under the dominance of a single interest as the subject matter committees of Congress. And those that are so dominated have a bad conscience not shared by their brethren on the Hill.

The Department of Agriculture is probably as clearly a clientele department as any in the United States government. Nevertheless, it compares most favor-

organization, our electoral system, and the organization of Congress so that the grounds for such doubt will be removed" (*op. cit.*, p. 217). Burns and others have pointed out the road blocks in the way of such reform. Compensation for congressional deficiencies through the presidency and bureaucracy seems the normal course of our development. Had Professor Hyneman considered the possibilities of moral restraints, as Barnard suggests, this road might not have seemed so perilous.

¹³ A thoughtful interpretation of the whole problem of interests and the bureaucracy is contained in David B. Truman, *The Governmental Process* (New York, 1951), esp. Chs. 8 and 9.

ably with the Senate and House Agricultural Committees in the breadth of its conception of the public interest. (In point of fact, the luckless Bureau of Agriculture Economics incurred congressional wrath for daring to act on the assumption that it had a responsibility to the consumer.) As mediator, moderator, and synthesizer of the raw demands of the agricultural pressure groups, the Department works to attain a feasible national farm policy in a context of political and group demands. The structure of the Department in itself insures some consideration of the many aspects of the nation's agriculture in the formation and formulation of policy alternatives. Agronomists, soil chemists, nutritionists, economists, market analysts, and a host of others organized in bureaus and divisions bring together and into focus the elements necessary for responsible decisions. The point of view of personnel trained to think of a national economy and to utilize a scientific outlook is a needed counterpoise to the immediacy of political demands and the narrowness of pressure group perspective. In addition, the very permanence of the Department and the comparative permanence of many of its personnel provide a range of vision that at least partially transcends the headlines of the moment. Of course, it is true that sometimes, as in the Forest Service, the interest of the Department seems to be a bureaucratic contemplation of its own navel. Still the Department institutionalizes, however inadequately in its bad moments, the long view and the broad look on the nation's agricultural problems. While occasional Congressmen and occasional pressure groups also may take the long view, in the main such behavior is exceptional and little reliance can be placed on it.

Responsibility is a product of responsible institutions; and with all their deficiencies—which are many indeed—the departments of administration come closer than any other organs of government to achieving responsible behavior by virtue of the breadth and depth of their consideration of the relevant facts and because of the representative character of their personnel.¹⁴ As continuing organizations, they can learn from their mistakes. They can even make their mistakes meaningful. That is, they can make explicit to themselves the hypotheses on which they act and so make failure itself a source of knowledge. In however limited a form, these agencies are organized to make self-corrective behavior possible.

The difficulties of arriving at self-corrective behavior in the disorganized and heatedly partisan atmosphere of Congress are all too apparent. Legislatures such as the British Parliament have at times developed wisdom and perpetuated it in a sound tradition workably related to the problems confronting the nation. But in the absence of a disciplined party system with reasonable continuity of leadership, conditions are too anarchical in our Congress to permit that body to try to organize its experience for the production of knowledge. The conditions of political success do not encourage the cooperative corporate endeavor that characterizes our successful disciplines dedicated to the discovery of fact and

¹⁴ Cf. George A. Graham, "Essentials of Responsibility," in F. M. Marx (ed.), *Elements of Public Administration* (New York, 1946).

the testing of hypotheses. One must hasten to admit that few agency heads willingly admit failure and search for its causes. The extraordinary but explicable overestimate of the magnitude of reconversion unemployment by the O.W.M.R. after World War II was regarded less as an opportunity and a first-rate challenge to reëxamine some fundamental economic thinking than as a botch to be dealt with by the palliative arts of propaganda. Even the eminently sane strategic bombing survey was frequently imperiled by an expedient urge to color the facts. Nonetheless, for the Air Force to undertake a strategic bombing survey at all is an encouraging instance of the recognition of the need of self-corrective behavior. Similarly, the State Department may undertake a review of China policy not simply to provide a brief for the defense but to examine the causes of past failure and to extract the lessons that may lead to future success. Given the current situation, such a review is beyond the capacity of Congress to undertake. In addition to the anarchic conditions already noted, a major reason for this lies in a phenomenon pointed out by Roland Young: the members of Congress, majority as well as minority, do not identify themselves with administration.¹⁵ Law in action is administration—and it is the work of the bureaucrats from whom and from whose works Congressmen instinctively dissociate themselves. Policy in practice thus is never the responsibility of Congress. The “foul up” is always the fault of the Administration, and Congress is well-nigh in the position of the British King who can do no wrong. Yet the penalty for the failure to accept responsibility for the test of legislation in administration is blindness to the possible lessons of experience. It may be that if government is ever to learn from its experience, the learning process will in large measure depend on the functioning of the bureaucracy.

Through the breadth of the interests represented in its composition, the bureaucracy provides a significant constitutionalizing element of pluralism in our government. Through its structure, permanence, and processes, it provides a medium in which the conditions requisite for the national interpretation of experience can develop. Thus it has a substantial part to play in the working constitution as representative organ and as source of rationality.

Returning now to Aristotle's suggestive analysis of the real components of a constitution, it is interesting to consider the ethical constitution of the bureaucracy. What is the prevailing ethos of the leading elements in the bureaucracy and how does it compare with those of the other branches of government, notably that of Congress? A detailed analysis of working attitudes towards the rule of law, civil liberties, and due process would be illuminating. A powerful case might well be made that in practice the bureaucracy shows far more concern and respect for each of these constitutional fundamentals than does the Congress. Certainly no agency shows such blatant disregard for due process as is customary with congressional committees, while the entire body's acquiescence in the abuse of congressional immunity bespeaks a disregard for constitutional safeguards that goes beyond committee excesses.

¹⁵ Young, Ch. 1.

It was the bureaucracy, acting through the Department of Justice, that drafted Truman's unsuccessful veto of the McCarran Act, despite the potentially great power which the administration of this act could place in the hands of reputedly power-hungry bureaucrats. And if the executive branch has a sorry record on a loyalty program whose procedures give less opportunity to the accused than to a common felon, the explanation lies in a pusillanimous attitude to Congress rather than in a lack of scruples. One may search the records of Congress for a wiggling administered to the F. B. I. similar to that frequently administered to the Home Office by the British Parliament. It is the nation's good fortune in having a man of the character of J. Edgar Hoover heading the F. B. I. rather than careful congressional scrutiny that has thus far secured us from the danger inherent in a national police.

Clearly the difference in ethos in the congressional and administrative branches of the government is not due to any mysterious vice in the one or virtue in the other. The difference must relate to the backgrounds and education of the personnel recruited for each and the seemingly wide difference in what constitutes successful practice in each as well as to the forces that bear upon them. Both branches are products of the effective political sentiments bearing upon them; they are rivals in political competence, varying according to their respective patterns of representativeness and responsibility. (For example, criticism of law schools and law reviews wrings the withers of no Congressman; it does have effect upon the bureaucracy and the courts.) Altogether, the climate of influential opinion is different, and the working of the group structure through the relevant institutions of selection and election produces a different result.

Given the views and composition of Congress, it is a fortunate fact of our working constitution that it is complemented by a bureaucracy indoctrinated with the fundamental ideals of constitutionalism. This varied group, rooted in the diversity of the country, can be counted on to provide important representation for its pluralism. In a real and important sense, it provides a constitutional check on both legislature and executive.

It is no neutral instrument like the German bureaucracy, available to Nazi and democrat alike, pleading its orders from "*die höhe Tiere*" as an excuse for criminal acts. Be it noted that this plea of duty to carry out orders neutrally met short shrift at Nuremberg. Facing the facts should lead to some interesting changes in the theory of the desirability of administrative neutrality. It is the balance of social forces in the bureaucracy that enables it both to perform an important part in the process of representation and to serve as a needed addition to a functioning division of power in government. Were the administrative branch ever to become a neutral instrument, it would, as a compact and homogeneous power group, either set up shop on its own account or provide the weapon for some other group bent on subverting the constitution.

A candid review of the causes leading to the overthrow of constitutional governments in recent years will show few, if any, examples where prime responsibility can be placed on the bureaucracy. With the exception of the

military in Spain and South America, one must look elsewhere. Indeed, the very weakness of bureaucracies incapable of maintaining order has been a major chink in the constitutional armor; but anarchical legislatures incompetent to govern, accompanied by the rise of totalitarian political parties, have been the political causes of the debacle of constitutionalism. It is high time that the administrative branch is recognized as an actual and potentially great addition to the forces of constitutionalism. The advice of the devotees of Locke would make it a neutral instrument, a gun for hire by any party. Fortunately, such advice cannot be taken. Far better would be to recognize that, by appropriate recruitment, structure, and processes, the bureaucracy can be made a vital part of a functioning constitutional democracy, filling out the deficiencies of the Congress and the political executive. The theory of our constitution needs to recognize and understand the working and the potential of our great fourth branch of government, taking a rightful place beside President, Congress, and Courts.