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CONGRESSIONAL CONTROL OF THE PUBLIC SERVICE*

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Since the English Revolution of 1688, it has been a part of the Anglo-American tradition that elected representative assemblies control the policies and acts of the executive branch of the government. This doctrine was firmly embedded in the American state and federal constitutions. With some wartime reservations, it has been universally accepted throughout our country. At the present time, however, there is an uneasy feeling that practice does not square with theory. There is even a suspicion that practice contradicts theory—that a vast body of officials has in fact escaped the possibility of control by the people's representatives.

The trends of the last half-century have certainly complicated the problem of congressional authority over administration. This has occurred in part because administration has made impressive gains in effective organization and operation, while relatively Congress has stood still. Within the administrative system there has developed a capacity for self-direction which might well challenge the dominance of Congress, if Congress continues to be the laggard partner in the governmental team.

The fact that Congress has declined in public esteem and in comparison with the executive branch is so apparent that Congress itself is preparing to take reformatory steps. I do not propose to discuss the difficult problem of congressional organization. I merely argue that reform is essential if Congress intends to control administration. I must, however, make some assumptions about the

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future organization of Congress, since if it remains unreformed I despair of effective and intelligent control over the public service. For the purpose of this discussion, I therefore assume (1) that the majority party in each House will assert more effective power to control its own members and the business of Congress; (2) that congressional committees will be reduced in number and made responsible to each House; and (3) that the seniority rule will be abolished. These are minimum requirements, however difficult of realization.

I

Some contend that no improvements in Congress are likely to be enough; that the range and complexity of public administration are such that its control by a representative assembly has become impossible. The author of *The Managerial Revolution* argued that officials have already usurped the very essence of congressional power by determining public policy. Officials are certainly active participants. Some believe that Congress has lost the capacity to arrive at a formulation of policy except under compulsion from outside, especially the compulsion of the executive branch. There is much in the record to support this view. Some claim that the "bureaucracy" has acquired a capacity for resistance which puts it beyond the reach of amateurs. There is evidence to sustain this contention. We can all agree that the mere existence of a federal civilian army probably destined to remain at not less than a million and a half, armed with wide discretionary powers and possessing both intelligence and a sense of direction, presents a problem of control. If we intend to remain citizens of a republic and masters of our future, we may well take note.

I assert, nevertheless, that congressional control of the administrative system is not only democratically essential but also technically feasible. It is not feasible, however, on the pattern of the eighteenth and nineteenth centuries, projected into the twentieth. The forms of control which Congress now understands and tries to use are not especially good for control and are sometimes bad for administration. They need to be thoughtfully reconsidered.

The indictment against the existing system of congressional control is impressive. It is basically control over details, not over essentials. It is negative and repressive rather than positive and constructive. It reflects fear rather than confidence. It is sometimes

irresponsible. It is based on no rational plan, but is an accumulation of particulars whose consequences are seldom seen in perspective. Congress has done both too much and too little in trying to discharge this phase of its responsibilities. It needs a Committee on Congressional Management to do for it what the President's Committee on Administrative Management did for him.

Without presenting the specifications of the indictment, a few particulars may be suggested by way of illustration. The *Statutes at Large* and the annual appropriation acts are cluttered with a mass of detailed prohibitions and limitations upon administrative action. They represent in part a process of legislation by exasperation. Unfortunately, these often petty restrictions tend to continue and to accumulate. They hamper good administration and miss the mark as a means of control.

The mass of legislation governing the housekeeping activities of government departments became so great by 1930 that escape was necessary for the pioneering ventures of the New Deal. Congress deliberately released the Tennessee Valley Authority and some other government corporations from part of the restrictions placed upon older established agencies. The General Accounting Office and Congress itself have both looked upon this freedom with a jaundiced eye, and it tends gradually to disappear. One may take the view that a degree of freedom was good for the T.V.A. and would also be good in due measure for the whole federal system. Congress has apparently taken the view that freedom is progressively less good for the T.V.A. and is dangerous in principle.

Obviously, Congress is in error when it asserts control by making particular administrative decisions. This temptation, however, continues to be strong. For example, Congress requires senatorial confirmation of appointments of certain middle management officials. This is an invasion of an area definitely administrative, not policy-making. It is motivated either by a taste for patronage or by the natural desire of congressmen to protect themselves against the political consequences of administrative bungling in their states or districts. The attempt of Congress to force the removal of three named persons—Messrs. Lovett, Dodd, and Watson—is an example of congressional interference at its lowest level. In still another direction Congress recently invaded the proper field of administrative decision by reserving the right to decide from time to time how much oil could be produced from certain naval re-

serves. The President protested this action, but was forced to yield.

These criticisms of some of the forms of congressional control of the administrative system are not intended to cast any doubt on the desirability or necessity of such control. I would argue, indeed, that we need increasingly effective supervision by Congress as the powers of officials increase, their discretion expands, and their numbers multiply. My argument is that we are likely to get progressively less effective supervision unless Congress changes its tactics and strengthens its own position.

The task is to devise a system of congressional control which will be adequate to democratic purposes without at the same time impairing the capacity of public officials to operate efficiently. This balance cannot be attained by any simple formula. A solution is complicated by the fact that Congress (the controlling body) is "a numerous assembly" unaccustomed to close internal discipline, with a changing personnel periodically absent from the seat of government, whereas the public service (the agency to be controlled) constitutes a vast permanent hierarchy of trained, professional, and relatively disciplined officials.

The two essential objects which Congress must achieve are, first, to ensure that its mandates on public policy prevail, and, second, to ensure that the execution of public policy avoids waste, incompetence, and unnecessary public inconvenience. I propose to explore each of these essentials in turn.

II

Congress in theory has, of course, complete control of public policy, at least in the domestic field. Some congressmen believe that they are losing control of policy, because bills originate elsewhere, because departments and agencies are developing their rule-making powers on an ever-increasing scale, because they suspect their policy is not always fully observed in the course of administration, and because they fear administrative action may foreclose a future policy decision by Congress.

Although it is important to conserve congressional control of policy, it is not necessary or desirable to require congressmen to originate all the bills. Congress first shared this duty with officials in September, 1789, when it asked Alexander Hamilton to bring in recommendations on the public revenue and discharged its own committee from further consideration of this subject. In recent

years, the administrative agencies have carried an ever larger part of the task of policy initiation and first formulation, and properly so.

The need for effective coördination of administrative rules with statutes presents a more important consideration. One of the most effective means of securing an appropriate control of the rule-making power, without hampering administrative operations, is to follow the procedure applied in 1939 in connection with plans for administrative reorganization. Here the initiative lay with the President, who was authorized to prepare plans for submission to Congress. Each plan was to lay on the table for sixty days and to become effective unless, within this period, the two Houses disapproved by a concurrent resolution.

Except in emergency cases, Congress might properly require basic administrative rules imposing obligations upon citizens to be reported to it in this manner, and to be subject to a legislative veto. This practice has long been accepted by the British House of Commons in dealing with provisional orders.

It is also important to ensure that administrative action accords with congressional policy and to give Congress a more effective sense of participation in early stages of policy formation. The policy conferences which Secretary Hull held with members of the Senate Foreign Relations Committee suggest a useful line of experiment. A large part of the major issues of public policy could be included within a small number of such conferences: for example, foreign policy, including military and naval programs; fiscal policy; social security policy and veterans' benefits; business policy; and resources policy.

This proposal assumes, let me repeat, that the committee system has been reformed, that the seniority rule has been abandoned, that the majority party has accepted effective responsibility for directing the business of Congress, and that consequently confidential discussions of policy will not be reported to the press. Policy conferences would be seriously handicapped as long as the seniority rule prevails; length of service on a committee is no guarantee of party confidence or personal restraint. Such conferences would be devoted to broad policy orientation rather than to the terms of a particular bill; indeed they should normally precede the stage of bill-drafting. They would occur at frequent intervals, and would be participated in only by members of the

majority party. On the administrative side, the participants would include department and agency heads and their policy advisers; members of permanent staffs would be present only to furnish data, for otherwise their status would be undermined with a change of party.

It is unnecessary to argue that Congress can secure firmer control of policy by enacting laws which are neither vague nor ambiguous. These criteria are impossible to achieve when the mind of Congress is confused or divided. Unfortunate is the lot of the official who has then to decide his course of action; he must make his own contribution to policy with the high probability that he will offend one section of congressional opinion. To congressmen may be commended the moral virtue of charity as they review the decisions of their agents.

Apart from the gains arising from greater precision in drafting legislation, I would therefore argue that Congress may be better assured of genuine control of policy by adopting the provisional-order technique as a means of reviewing administrative rules, and by cultivating policy conferences with top executive officials in the most important and most controversial areas of public action.

The House Select Committee to Investigate Executive Agencies recently recommended another type of policy control: a permanent joint standing committee to ascertain whether the laws are executed according to the intent of Congress. I doubt whether any single committee can advise the departments and agencies of the intent of Congress throughout the length and breadth of public policy as stated in federal legislation. There are other and better ways of determining the intent of Congress; and it is not necessary to set up a standing committee to prevent deliberate neglect or defiance of the will of Congress by any administrative agency.

III

The second major objective of congressional control is to ensure that public policy is executed efficiently, without waste, and without undue public inconvenience. Congress has a duty to watch the course of administration, consult with officials, criticize administrative policies and performance, and conduct formal investigations. But it can make its contribution to efficiency only by a substantial degree of abnegation—by giving up the practice of criticizing details in favor of a genuine over-all supervision achieved

through a few really effective administrative controls within the executive branch.

If Congress must, in its own interest, forego control of details, what form of action can it undertake to compel high standards of performance? The answer is, it must concern itself with the improvement of the administrative system, and with creating the conditions of employment which attract a superior type of public official. Congress needs to face the task of creating a *system* which tends to produce competence rather than incompetence, responsibility rather than irresponsibility. If incompetence does occur, the essential question for Congress to ask is: What is wrong with the system of administration or the quality of management which permitted it to develop? The essential remedy for Congress to apply is not to discipline individuals or agencies (although discipline may sometimes be necessary), but to insist upon the improvement of the system and the quality of management. Only by bringing the administrative system to a high point of perfection can official stagnation or incompetence be reduced to the minimum which an imperfect world must tolerate.

The historic instrument of congressional criticism and investigation is the standing or special committee. The Interstate Commerce Committee of the Senate, the Civil Service Committee of the House, and the Truman Committee illustrate what can be achieved under favorable circumstances and with stable leadership. These forms of legislative control are pervasive and important. An intelligent public official proceeds on the assumption that he may have to explain his every act before a congressional committee. While this is a salutary climate for official life, it can quickly induce an insidious form of sleeping sickness unless Congress exercises its power with restraint, and constructively. A hostile remark by a congressman in a committee hearing, or even worse on the floor of the House, induces tremors throughout the official world. But congressional wrath is not necessarily control, and official trepidation not necessarily conformity. The problem remains of translating undoubted congressional influence on administrative performance into intelligent ultimate control of standards of administrative excellence.

It has been proposed to increase the influence of the present committees by attaching to each of them a small staff of experts, who could balance the influence of the experts who speak for the de-

partments and agencies. The proposal to equip committees with technical staffs raises some serious questions. It would probably increase the potential rivalry between the subject-matter committees and the Appropriations Committees. It would also lessen the probability—remote enough at best—of substituting joint committees for separate, independent, and sometimes hostile committees of the two Houses. It would set the stage for conflict between two sets of “experts,” or potentially three—one in the House, one in the Senate, and one in the department. It would incur the danger of administrative management by a committee chairman and his experts. Much worse, it would fasten the present committee structure upon Congress; for the existing vested interests of chairmen would be buttressed by those of technical staffs. I do not, therefore, favor staffs for congressional committees until the committee system itself has been reformed. A rational committee system, however, would strengthen the case for small committee staffs. I do not need to add that a system which allotted one committee to each department, agency, authority, office, corporation, and commission would not be rational; it would be positively dangerous.

Parenthetically, one improvement is greatly needed in committee contacts—an improvement too subtle to be subject to legislation or standing orders. I refer to the need for protecting officials and citizens against the unintelligent and intemperate attacks to which they are sometimes subjected by committee members. Two instances will illustrate my point: the attacks upon officials of the Tennessee Valley Authority at hearings in the Senate, and the recent investigation of the Federal Communications Commission in the House. Congress can ill afford to allow such displays of arrogance or such punitive expeditions. They impair respect for Congress and for congressmen, and raise questions about congressional powers which ought not to be open to discussion.

To keep congressional use of the power to criticize on the level of decency is a responsibility of Congress itself. It can be achieved best by the unwritten code of each House. The prescriptions of this code derive from practice—but practice is molded by leadership and by the behavior of the men who have earned the respect of their colleagues. In ways which are subtle but none the less compelling, the behavior of a small minority who do not understand the ordinary courtesies of human contact and the purposes of

congressional control can be curbed and ought to be disciplined.

To return to my principal theme—Congress cannot through fifty committees or fifteen become a board of efficiency engineers. No board of directors of a great business organization would undertake to solve its operating problems. The directors do enough when they require a system of management properly designed to produce results, and secure top business executives of a high order of competence. The control function of Congress is analogous. Congress should bend its efforts to create a system of administration based on the best known practice and should provide conditions of employment which will attract able men and women. If then incompetence or official arrogance appears, Congress should find out where the system is at fault and insist upon a remedy.

Congress needs some means other than private complaint to keep informed of official incompetence. It is now moved to action principally by complaint—sometimes justified and sometimes not. As a complaint bureau, Congress might take itself less seriously than it has at times. Like its presumed agent, the General Accounting Office, it has been known to waste endless time and energy on inconsequential trivialities while serious waste and mismanagement went unnoticed. The problem at this point is to devise institutional means of bringing to the attention of Congress the really important issues of administration, and to aid Congress in finding genuinely effective solutions.

The House Select Committee to Investigate Executive Agencies recently proposed to place this function in a joint standing committee on appropriations, with the help of a joint legislative staff.¹ This recommendation is entitled to respect. It might, however, have the undesirable effect of diverting the Appropriations Committee from its main functions—to weigh the great competing claims upon the Treasury in the scales of the general interest and to adjust the volume of public expenditures to safeguard the public economy. These tasks are so important and so different in kind from the task of considering administrative performance that it is open to question whether they should be combined.

There is an acceptable alternative. Congress has an established agency of its own which is in touch with every unit of the administrative machine, the General Accounting Office. It has been per-

¹ House Report No. 1912, 78th Cong., 2nd Sess., Nov. 20, 1944.

mitted to operate on the level of details, not on the level of principle, and to extend its authority far beyond an audit. In consequence, Congress may have acquired a sense of security against embezzlement, but it has been gained at a heavy and unnecessary cost in economy and efficiency. The President's Committee on Administrative Management proposed to convert this office into one concerned only with an audit. Such a change is long overdue. If the General Accounting Office could be induced to abandon the search for petty errors and devote itself to advising Congress on major administrative problems revealed by the audit, it would become an instrument of far greater value to the American people. It could then perform for our government the function that the British Comptroller and Auditor General performs for his government—responsible criticism of administrative operations on the broadest scale. Congress can bring this reform to pass only by new directives involving important changes in the character of the General Accounting Office. Furthermore, Congress itself should select the Auditor General and make him fully responsible to it. A new congressional Joint Committee on Executive Agencies and Procedures would then have a significant and challenging opportunity to improve administration by dealing with principle rather than with the complaints of disappointed and disgruntled individuals.

IV

The apparent dilemma presented by the need for legislative control of a powerful public service and the need for relative freedom of official action to secure sound management is in truth a perplexing one. As a student of public administration, I probably am more sensitive to the need for a free hand for officials, at least in the service functions of government. But Congress must have ultimate control of policy and its execution. I urge that it settle on principle and avoid detail. To control policy as it is defined in administrative rules, the provisional-order technique deserves attention. To participate in policy in its formative stages, the device of congressional-executive policy conferences might be useful. To ensure high standards of administrative performance, Congress can make its greatest contribution by building up the administrative system and by depending largely on its internal controls. A reformed committee system would continue the function of con-

sultation, criticism, and occasional investigation; but as committees become more powerful, they need to be on guard lest they take over in fact some of the responsibilities of administration. The greatest single asset of Congress to guarantee sound administration might be a transformed General Accounting Office, restricted to an audit but strengthened to become an office of administrative intelligence acting on behalf of the two Houses. These innovations would, in my judgment, help achieve a satisfactory balance; they would go far to strengthen Congress without impairing the necessary authority of the executive branch of the government.

In closing this paper, I reëmphasize familiar ground—the great objectives to be secured by congressional control of administration. They are close to the heart of democratic institutions, since an uncontrolled body of permanent officials and employees would almost certainly degenerate into a bureaucracy, with all the unpleasant connotations of that word. It is the duty of Congress to be ever on guard against official sloth, stupidity, arrogance, or corruption. Apart from the courts, the elected representative is the principal protection of the humble citizen against abuse of the great powers which officials possess. We must always remember, however, that power may be beneficent; and in a democracy it is presumed to be directed toward beneficent ends. Congress faces, therefore, a delicate problem of balance—it must control with enough certainty of touch to guarantee a responsible and responsive public service; but it must refrain from impairing the capacity of the public service to achieve the great social purposes to which it is dedicated.