31. Administrative Organization

Department of State

DEPARTMENTS, non-departmental executive agencies, and commissions comprise the administrative branch of the federal government. That is to say, they administer the laws enacted by Congress; they do the actual work of governing. Moreover, they have large grants of authority from Congress and from the President; the powers they receive through these grants are so important as almost to make independent branches of government out of some large agencies. The vast array of these organizations testifies to the scope of the tasks carried out by the government (see Figure 59), and their extensive growth demonstrates how the people have come to expect a greater and greater number of services from the government. In 1789, the administrative organization was quite small, numbering only a few hundreds of employees; today it contains over two million persons in almost as many professions and trades as exist in private business.

SIZE OF THE ADMINISTRATIVE ESTABLISHMENT

The last chapter has revealed the sources and causes of many new government functions. Each new activity demands new personnel to administer it. Figure 65, on page 497, shows the number of civilian employees of the executive branch of government and the increase that was registered between 1884 and 1955, a period of seventy years. The number of *federal* government civilian and military employees has risen faster than the total number of workers in the nation; this fact is depicted in Figure 60. Finally, the relative size of the larger agencies of the government are pictured in Figure 61. One great agency, the Civil Service Commission, is created solely to manage part of the work of recruiting and controlling these employees; its work will be described in the next chapter.

There are many other evidences of the great volume of federal administrative work. The office space occupied by the many agencies takes up the equivalent of thirty-six Empire State Buildings. The records of the government alone consume twenty-four million cubic feet of space; if brought together they would fill an office building twenty stories high with a frontage and depth of about 280 feet. Aside from the tons of paper that go into pamphlets, manuals, bound volumes, packaging, and signs, twenty-five billion sheets of paper are used by the government each year. Government offices produce one billion letters annually. In 1912, fifty-five letters were mailed out for every federal employee; in 1953, 522 letters per employee were sent. For keeping each other informed, for overseeing their field work and subordinate offices, and for checking on the activities of business, federal agencies require 131,700 reports. The agencies demand about 100,000 reports annually in their internal work; they require 25,000 reports of field activities; they process 2,000 reports from one agency to another; and they demand 4,700 reports from commerce and industry. All these estimates were made by the Hoover Commission on Organization of the Executive Branch of Government from 1953 to 1955.

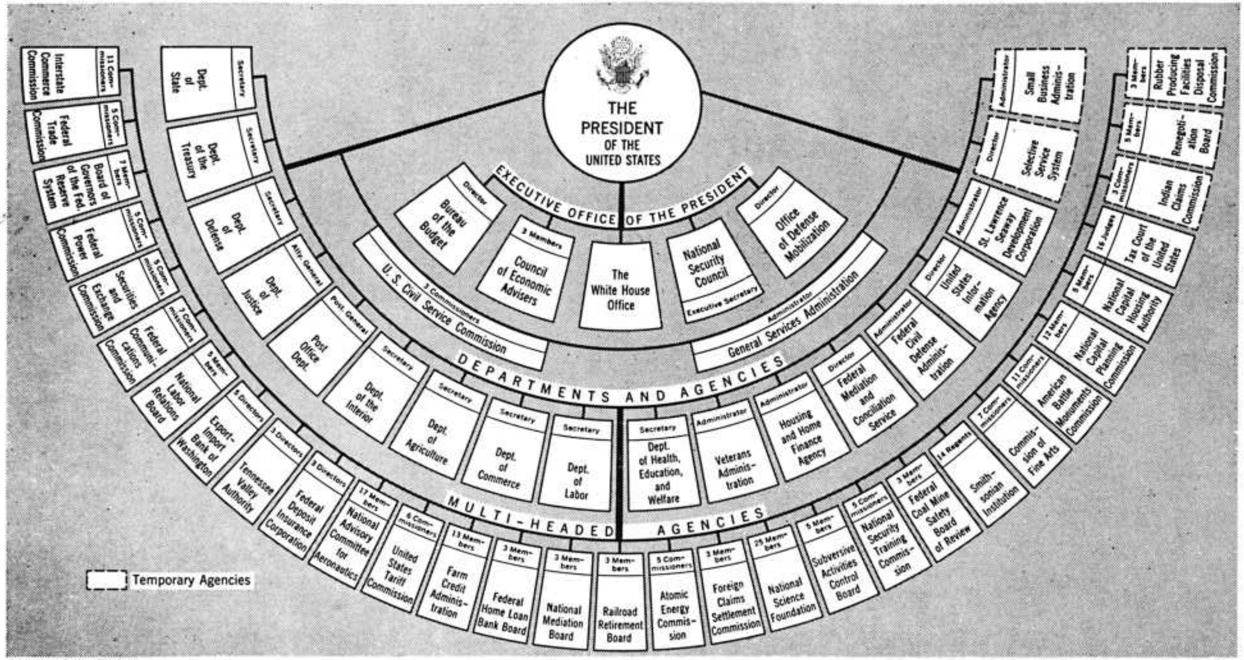
Comparisons with other great organizations

Probably the only administrative body in the world whose size exceeds that of the American federal government is that of the Soviet Union. In complexity, however, it is likely that any large nation of modern times has an equally staggering task of management. Moreover, so far as other types of institutions are concerned, the Roman Catholic Church has for centuries administered an enterprise just as challenging, conducting its operations in many different countries and often without the power to tax. Furthermore, a number of modern American business concerns are huge and complicated, with dozens of factories, offices throughout the world, and a large variety of products.

It is interesting to note the many parallels that exist among large concerns of all kinds, public and private. The problems of large-scale enterprise beset them both. For example, it is often believed that government management invariably is overwhelmed by paperwork, whereas private industry is unhampered by red tape. Yet recent studies cited by the Hoover Commission contrasting three private firms with the federal government

---

A New Department Chief Moves into the Open Air to Reach Personally His Hundreds of Employees. John Foster Dulles, shortly after he became Secretary of State in 1953, addressed a gathering of civil servants to introduce his new assistants and relate his administrative policies.



Bureau of the Budget

Figure 59. Executive Branch of the Government.

showed that government files were no more burdensome than private business files.

The General Services Administration

In the last few years, an agency has been created especially to provide over-all custody of, control of, and responsibility for problems of storage, paperwork, and purchasing. This is the General Services Administration (GSA), an organization that merits particular note at this point. The GSA, created in 1949, is one of the largest, most important, and least known of all federal administrative bodies. With more than 25,000 employees, the GSA has a payroll larger than that of any other independent agency except the Veterans' Administration. The Federal Supply Service in the GSA is the central purchasing agency for the whole national government; it also fixes standards and specifications for purchasing. The Emergency Procurement Service buys the goods that the government is stockpiling against the chance of war. The Public Buildings Service manages buildings owned by the federal government, and supervises the design and construction of new federal buildings. The National Archives and Records Service preserves the many documents of the federal government, and publishes constitutional Amendments, acts of Congress, executive orders, presidential proclamations, and administrative regulations. The chief executive of the GSA is the Administrator, who is appointed by the President and confirmed by the Senate.

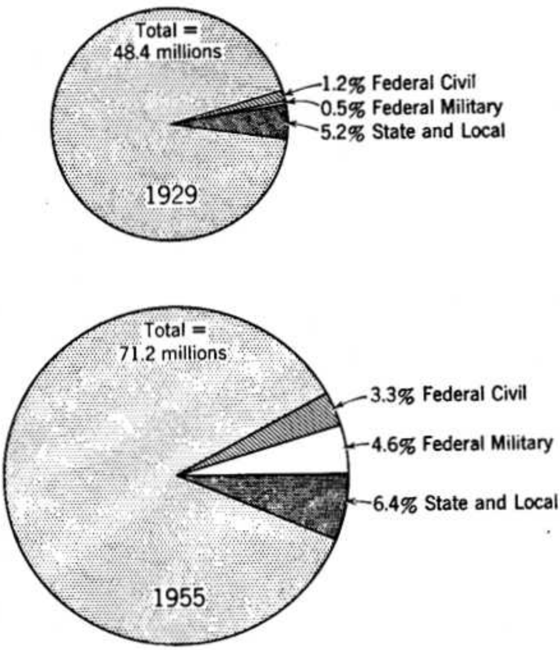


Figure 60. Percentage of Government Employees to Total National Employment, 1929 and 1955.

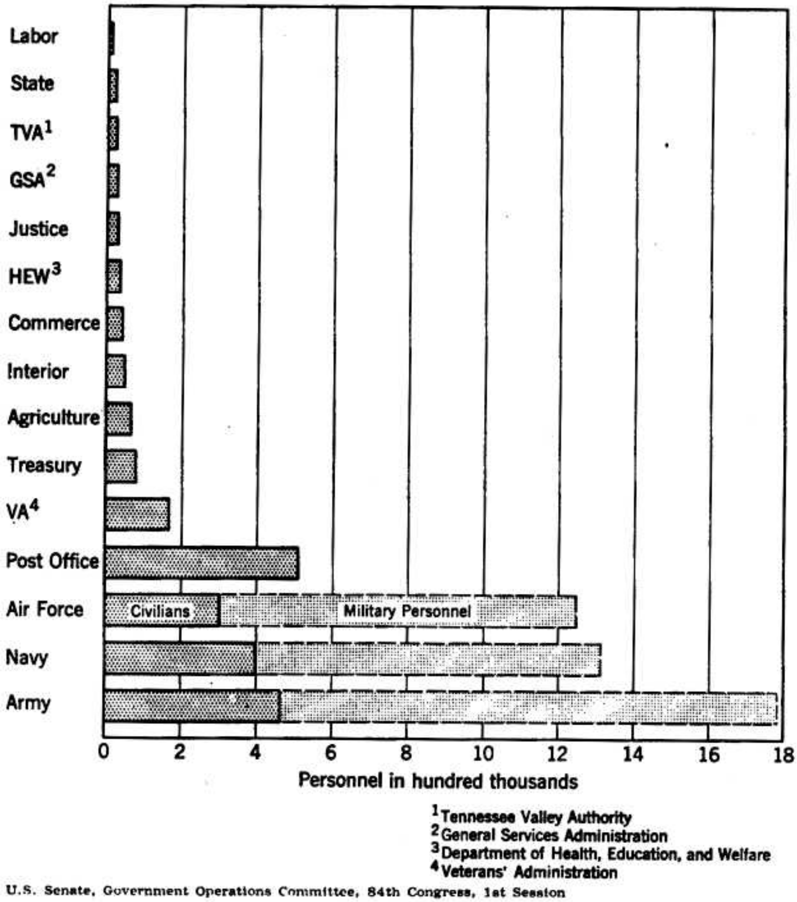


Figure 61. Number of Personnel in Selected Federal Agencies, January 1, 1955.

TYPES OF ADMINISTRATIVE BODIES

When an ordinary person thinks of the kind of organization that does large tasks in modern times, he is likely to think first of a corporation, so common is the corporation in business and economic life today. Yet the government does a host of things and usually does not accomplish them through corporations. In fact, there were only twenty-three agencies in 1955, among the several hundred in the government, that resembled strongly the well-known form of the private corporation. Of these, only seven were in fact leading separate and independent existences outside of any other government agency. The balance were inside a parent agency. The most famous government corporation is the Tennessee Valley Authority.

Government corporations are created by Congress and are given an initial sum of money to start their activities, together with a Board of Directors to guide them; they are free from direct control of the President, who merely appoints the Board members for fixed terms of office. Their financial affairs are watched by Congress. Also, like a private corporation, they issue stock, but all their stock is owned by the federal government. The reason why they are organized as corporations is that they are performing tasks, such as manufacturing electric power and operating the Panama Canal, that resemble the activities of private companies (although, for that matter, other government agencies, such as the Army Corps of Engineers, also perform tasks similar to those of private companies).

However, the corporate form is used to carry out only a few of the many activities of the federal government. The bulk of government functions is administered by three other types of major administrative bodies that lie outside of the Executive Office of the President.

There are sixty-six such separate administrative bodies in the federal government that are neither independent corporations nor part of the Executive Office of the President. (Some of the less important of these are omitted from Figure 59.) Of these, ten are Departments, nine are non-departmental executive agencies, and forty-seven are independent commissions (or boards). The fact that these three types are called by different terms conceals a great amount of similarity in their organization and operations. The simplest distinction among the three relates to the top figures of the agencies: the Departments have chiefs who are members of the Cabinet; the separate administrative bodies are organized like Departments save that their chiefs are not Cabinet members; and the independent commissions are headed by boards or commissions of several members, none of whom belong to the Cabinet. An example of the first type is the Department of Agriculture; of the second, the Veterans' Administration; and, of the third, the Interstate Commerce Commission.

A second distinction has to do with the relations of these leaders to the President. The Department chiefs and the non-departmental executive agency chiefs are appointed by the President, with the approval of the Senate, and may be removed by him whenever he pleases. The members of the independent commissions are appointed by the President, with the approval of the Senate, but serve for fixed terms of office and otherwise cannot be removed by the President, except for certain causes stated by Congress in statutes governing the agencies. These fixed terms are also overlapping, so that no board or commission may have its entire membership changed at the same time.

A third distinction among the three types of agencies is one that is not at all clear and is only partly true. That is, whereas the President, in the course of running the executive branch of the government, may direct the actions of the chiefs of Departments and non-departmental agencies at will, he has much control over the operations of some of the independent commissions but little control over the operations of others. An example of an independent commission over which the President exercises considerable control is the Civil Service Commission. An example of the contrary is the Federal Trade Commission.

However, regarding this third partial distinction, an additional fact must be remembered. At different periods of time, the personnel of the boards or commissions may come under different degrees of control by the President. Such variations may be due to laws of the Congress that change the relations between the agencies and the President; they may also be due to a coincidence of philosophy between a board and a President at a given moment. For instance, the Federal Trade Commission, when F. D. Roosevelt took office, was unfriendly to his policies, but, owing to his appointments over a period of time, became friendly to his ideas.

A fourth distinction among the three types of agencies concerns their function; this, especially, is a questionable distinction. Whereas the Departments and non-departmental executive agencies are supposedly engaged in operations of a hard-and-fast executive kind, those of the independent commissions are supposedly legislative, judicial, or advisory—as well as executive—in character.

It was, indeed, for this reason that Congress gave the form of boards and commissions to the top leadership of these latter agencies; Congress felt that a panel of "legislators" or "judges" or "experts" was called for to make "non-partisan" or "bipartisan" decisions on the matters entrusted to them by law. However, Departments and non-departmental executive agencies also exercise the same kinds of semi-legislative and semi-judicial powers, though perhaps not to so great an extent as the independent commissions. For example, in 1955, the Secretary of the Department of Health, Education, and Welfare, working through her subordinates, made rules regarding the standards of purity and excellence of the Salk anti-polio vaccine that had to be observed by all pharmaceutical firms. This ruling had no less force than a ruling by the Federal Communications Commission regarding the proportion of time that a television station must devote to public service programs.

Furthermore, the independent commissions frequently engage in the same kind of hard-and-fast executive work as do the other agencies. Much of the work of the Securities and Exchange Commission consists of registering stocks and bonds that are to be sold by stock and bond brokers, just as the Department of Agriculture carries on research in the improvement of livestock.

Also, within some Departments and non-departmental executive agencies, such as the Department of Commerce and the Veterans' Administration, are situated various boards to manage appeals and other types of judicial and legislative matters that the independent commissions also deal with. For example, one finds in the Department of Commerce the Board of Appeals in the Patent Office; this Board consists of the Commissioner of Patents, his assistants and nine Examiners-in-Chief. They hear and judge appeals from persons who have been denied patents. A similar board is the Board of Veterans' Appeals in the Veterans' Administration.

Hence, all three types of bodies, despite their different top structures, perform tasks of a similar nature—they execute programs of work, "legislate" or make rules, judge cases or "adjudicate," and give advice to Congress and the President. However, they do so in differing amounts and through different structures.

Beyond these distinctions (and similarities) thus far discussed, it is important to realize that there are additional fundamental resemblances in the work of all these bodies. Owing to these resemblances, the balance of this chapter can be concerned with some of the problems and features of administration in general. This can be done in the knowledge that what is said is true of all types of agencies.

THE CHAIN OF COMMAND

Supposedly public administrative organizations constitute a pyramidal body from the executive chief at the apex to the production workers at the base, with lines of control running down and lines of responsibility extending up. Figure 62 pictures a typical scheme for organizing a large-

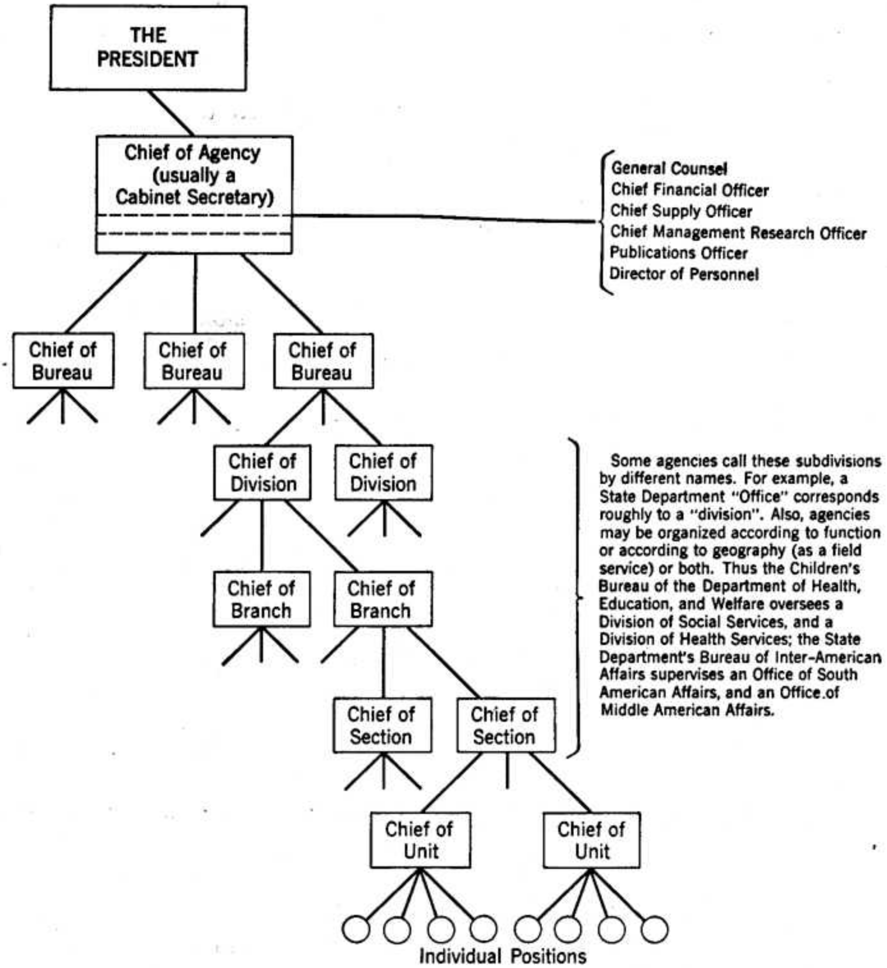


Figure 62. Typical Organization of a Federal Department. This same type of organization is found in a great many public and private enterprises throughout the world.

scale government agency. Public administration in the United States, however, betrays many deviations from this ideal. Theoretically the President is the executive head of the entire national government; yet, as has already been noted, the President does not directly control the independent agencies, nor are they absolutely responsible to him. Hence these agencies must at the outset be excluded from the pyramid. The Departments under the President do approximate more closely the theoretical structure; the Secretaries are generally under the control of the President. Within the agencies and Departments one encounters the chain of command again. In all Departments and in most agencies, authority moves from the top post down to the lower echelons.

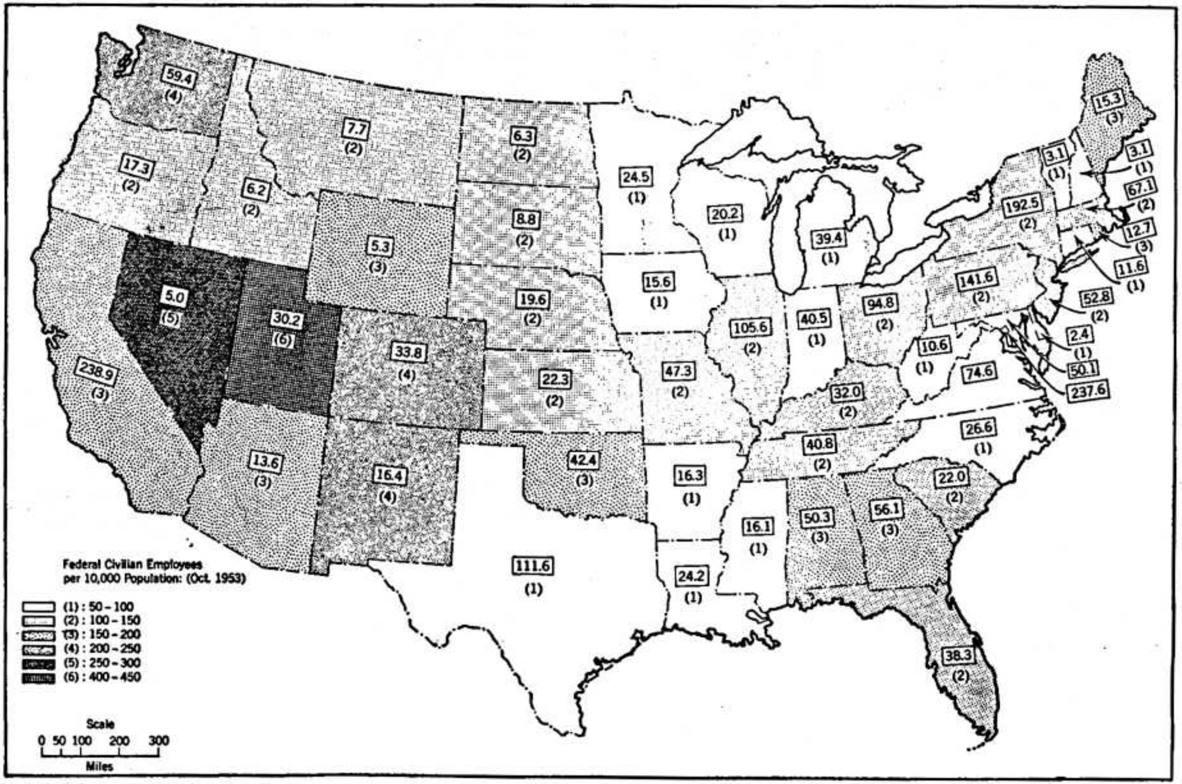
Administrative chiefs

Each Department has a single chief, usually called the Secretary; the non-departmental executive agency chiefs are called usually a Director or Administrator; independent commissions are managed by several persons in a commission or board. Immediately below the chiefs of all types of agencies comes usually an assistant chief who may be an Under Secretary, an Assistant Administrator, or a General Manager or Director in the case of a commission. Also sometimes in commissions, the Chairman will become the chief executive of the will of the board or commission. In most of the Departments, immediately below the Secretary is an Under Secretary, who is the deputy of the Secretary; that is to say, he serves as Secretary in the absence of the latter. Under Secretaries sometimes become Secretary; Dean Acheson was Under Secretary of State before becoming Secretary. However, most Under Secretaries cannot safely anticipate this sort of promotion.

Beneath these two chiefs, and responsible to both of them, there normally are several Assistant Secretaries. Each Assistant Secretary customarily supervises one of the major branches or functions of the Department. For instance, in the Department of Agriculture there are four Assistant Secretaries: one each for Federal-States Relations, Marketing and Foreign Agriculture, Agricultural Stabilization, and Departmental Administration. The Under Secretary and the Assistant Secretaries, like the Secretary, are political appointees; in recent years, however, there has been an increasing tendency to name as Assistant Secretaries only persons who have some knowledge and training in the function they are to manage.

Administrative subdivisions

All Departments and most independent agencies contain a scale of subdivisions descending to the individual employee. The first level of subordinate grouping is generally called the *bureau,* although expressions such as *office* and *division* are sometimes used. The next inferior level is usually called the *division,* although again various other terms have been substituted. Depending upon the size of the establishment, there may be one or more subordinate ranks down to the unit worker. Agencies are also subdivided geographically, in that many of them operate offices



Statistical Abstract of the United States: 1954

Figure 63. Distribution of Federal Employees in the Several States: Total Number and Number per 10,000 Population. Maryland and Virginia are unmarked because part of each is included in metropolitan Washington, D.C. Number in box is total of federal civilian employees (thousands omitted).

throughout the country; indeed, most federal employees work in the field, as Figure 63 discloses.

The chiefs at the bureau level customarily are the highest-ranking career officers; that is to say, neither their appointment nor their dismissal can arise from partisan political considerations. Theoretically, at this level there is an arbitrary line separating the policy-forming executives above from the non-policy-forming officers beneath; since bureau chiefs are presumed to be non-policy-forming, they hold their posts in spite of changes in the party control of Congress and of the presidency. The fact is that bureau chiefs are policy-forming only to a lesser degree than the executives superior to them. For example, a Secretary must rely upon his bureau chiefs for the information needed to make regulations; what information the bureau chiefs decide to submit, and the emphases they place upon it, play a great role in determining the contents of the regulations formulated by the Secretary. It is thus possible for an entrenched group of bureau chiefs to hamper the policy aims of the Secretary; this is especially true when, as sometimes happens, a bureau chief is a good friend of a congressman who is a member of the congressional committee that deals with the administrative organ concerned. Under such circumstances the ideal lines of control and responsibility are either very weak or even totally nonexistent.

THE POLITICAL AND LEGAL TOOLS OF ADMINISTRATIVE BODIES

Administrative bodies have certain political and legal means of carrying out their functions. These appear in such activities as influencing the President and Congress, informing people about the law, watching for violations of the law, prosecuting violations, and promulgating rules for individuals and groups.

The administrative legislative process

This text has already described two types of legislative process. One is the fundamental, congressional process dictated by the Constitution, whereby a bill is inspired, introduced, and enacted in the halls of the Senate and the House. (See Figure 47.) The second is the presidential legislative process, in which the initiation and the promotion of a bill emanated from the White House. (See Figure 40.) Besides these there is also the administrative legislative process, in which an administrative agency conceives a notion respecting legislation and works to have its notion enacted into law. (See Figure 64.) One of the clearest descriptions of this process appears in the *Foreign Service News Letter* of February 15, 1955, a publication of the Department of State:

> What does it take to get a bill through Congress and enacted into law? The answer to this question is not a simple one. The process is long and tedious, with the attrition rate on bills introduced in Congress extremely high.
>
> Actually, the [State] Department is in a better position than the average

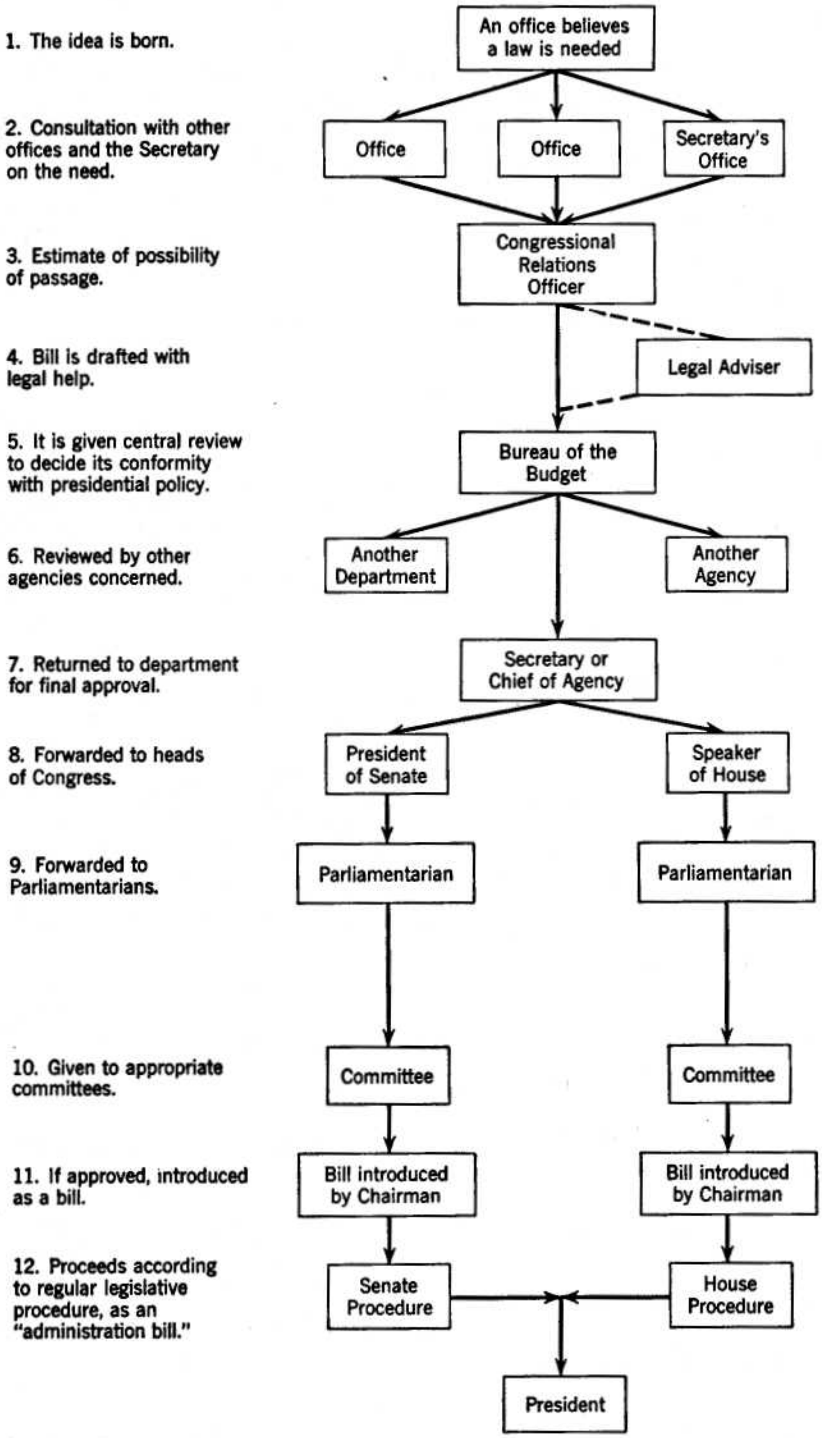


Figure 64. The Administrative Legislative Process.

group of private citizens when it comes to getting a bill passed. The procedure might occur in the following manner:

> Let us suppose that some area within the Department decides a certain piece of legislation is necessary. Their first step would be to consider all other areas in the Department which could possibly be affected and to consult with them. If all concerned agree to the proposed legislation, it is taken to the Office of Congressional Relations for evaluation in the light of possible passage. A draft of the proposed bill is then prepared with advice from the Legal Adviser's Office as to form and forwarded for review to the Bureau of the Budget by the Assistant Secretary for Congressional Relations. There, the draft is sent to any other Department of the Executive Branch which might be concerned, and if no objections are interposed and the Bureau of the Budget is in accord, the Bureau returns the bill to the Department, noting approval.
>
> Before final submission to the Congress the bill is sent to the Secretary. Having gotten this green light, the Secretary is ready to forward the proposed legislation, outlining the reasons for its request, to the Vice President, as President of the Senate, and to the Speaker of the House, who, in turn, submit the draft and request to the Parliamentarians of the two Houses. They assign the bill to the proper Senate and House Committees, and, if approved, the Committee Chairmen introduce a bill identical to the original draft, usually known as an "administration bill."
>
> At this point the first general phase of the long cycle of translating a Department-sponsored bill into law has been completed. Up until now the primary responsibility was in the hands of the Department. Now the burden shifts to the legislative branch—the Congress. However, the Department still maintains an important secondary responsibility. With the odds against final passage still large, the Department's liaison representatives with "the Hill" must remain constantly alert in arranging for hearings and organizing the Department's presentation to the Committee.
>
> Every committee of each house of the Congress has referred to it many more bills than it can possibly schedule for public hearings. If, however, the Chairman determines to hold them, all interested parties, pro or con, including the Department, are notified and invited to be heard. This is when the Department has its "day in court" and brings up its heavy artillery to try and win the support of at least a majority of the Committee.
>
> At the conclusion of the public hearings, the Committee goes into executive session. The members are polled and if a majority favor the bill, it is reported out favorably. At this state, a bill can be killed by an unfavorable vote or it can be amended by the Committee. If the bill is voted out, the Committee staff prepares a report which sets out the reasons for the bill, excerpts or digests testimony of witnesses and gives the Committee's reasoning for its action.
>
> At this point our bill has successfully negotiated the first hurdle in the long obstacle course leading to enactment.

Many agencies of the government follow a procedure strongly resembling that described by the State Department. It is difficult to estimate what percentage of all congressional enactments begin in a similar fashion, but the proportion may be as much as one quarter. It has certainly been increasing in recent years.

Sub-legislative and controlling functions

Beside working on Congress and the Executive Office of the President so as to alter the powers of their agencies, administrators must also carry out the decisions of their agencies, through the various means they have for influencing the American people. However, in any given circumstance, the administrator usually does not have a wide latitude in selecting the means for implementing his powers; rather, the means most often have already been fixed by Congress in establishing the administrative body. Where some range of choice is permitted, the administrator is apt to choose the means that will bring about his decision in the most efficient manner, yet will inflict the least possible discomfort on the people concerned.

Just what means are used also may depend upon what sort of relations the agency has with the people. For instance, the State Department has little direct impact upon American citizens; save with respect to those wishing to go overseas or already overseas, it needs to concern itself little with implementing its powers so far as Americans are involved. By comparison, there are agencies, such as the General Services Administration, that do not command the American people, but by buying huge quantities of materials have an impact on thousands of businessmen and workers. Finally, there are bodies, such as the Post Office Department, that carry out a direct service for the people. These distinctions in relations are tied in with the kind of means used.

Statement of Policy: The statement of policy is an effort to persuade the people to comply with a general line of behavior, without any punitive force against disobedience. Most high administrative officials upon assuming office issue statements of policy, such as the presidential State of the Union message. Another type of policy statement is illustrated by the declared embargo on trade with Japan before the Second World War, for which no penalties were established in the event of violations. The statement of policy tends to seek public cooperation, to appeal to a kind of "team spirit," without announcing any compulsion.

Education and Publicity: Education and publicity are somewhat more specific than a statement of policy, although they too contain no punitive machinery. They are likely to be more definite, to be concentrated upon single issues; and they are frequently delivered to only one section of the population. For example, the Department of Agriculture publishes a vast amount of literature about different farm procedures that the government would like to have adopted. The Department of Health, Education, and Welfare publicizes old age and survivors insurance, to convince people in the affected trades and professions that it is advantageous to them. Education and publicity may also strive for ends that are negative. The Federal Trade Commission, for instance, by noting so-called "unfair trade practices" may be recommending that people refuse to deal with certain business organizations.

Licensing: Licensing is a considerably stronger means for control than those described above. The government may require that any enterprise secure a license before it goes into business; and the government may establish the conditions that must be satisfied before the license will be granted. Licensing is a more important function for State and local authorities than it is for the national government; and for the lesser units, licensing, such as automobile registration, is a major source of revenue as well as a device for administrative control. However, on the national level, the Federal Communications Commission obliges every commercial radio broadcasting station first to secure a license; it may withdraw this license, or refuse to renew it, if the station can be shown guilty of certain practices; and the Commission may invoke the law in the event the station persists in operating without a license.

Rule-Making: Rule-making constitutes an administrative form of sub-legislation. Congress in creating the administrative body may authorize it to issue rules in the area of its competence. In recent decades Congress has relieved itself of a great amount of work by conferring this authority upon administrative agencies; it has neither the time nor the capability to make many of the rules essential for implementing policy. For example, Congress has empowered the ICC to fix the rates that railroads may charge for transporting freight, requiring only that the rates be "just and reasonable"; for Congress realizes that it alone could not find time to master the data on which the rates should be based. It is in the field of rule-making that a salient difference between Departments and independent agencies is revealed: rules made by the Departments are subject to reversal by the President, but rules made by independent agencies are not. It is for this reason that the interest groups associated with a phase of administration may urge that Congress create an independent agency, so as to avoid what amounts to a presidential veto on administrative rules. The intention to make a rule must be published in the *Federal Register*, and interested persons are allowed to testify in behalf of, or in opposition to, the proposed rule, much as in a hearing of a congressional committee.

Adjudication: Adjudication constitutes a subordinate form of judicial power enjoyed by many administrative bodies, especially certain of the independent agencies. The power of adjudication is employed in cases of disputes among private citizens, or between private citizens and the agency, arising over the rules issued by the administrative agency concerned. When the administrators discover that a rule has in fact been violated, they can impose specific penalties upon the violators.

It is particularly in the exercise of this power that the agencies betray the absence of the separation of powers in their functioning; for the same agency that has devised (legislative power) and enforced (executive power) these rules now undertakes to hear cases (judicial power) respecting violations of them. Moreover, officials of the same body both prosecute and render decisions in these cases; this proceeding should be contrasted with the typical federal court hearing, in which the prosecutor represents not the judicial, but the executive, branch of the government.

Partly in an effort to correct the results of this commingling of powers, Congress in 1946 passed the Administrative Procedure Act. This Act requires that the officials preparing cases involving infractions of the rules take no part in judging them; or, in other words, the Act separates prosecuting from judging. The Act also compels agencies to abide by certain concepts of normal juridical procedure; for instance, it states that every person testifying in a case shall be allowed counsel, and that all witnesses may be cross-examined. Doubtless the agencies hear many cases that the constitutional courts would refuse to take under their jurisdiction. At the same time, the courts have manifested great jealousy of administrative adjudication, and have often sought to remove cases from the authority of these agencies when the courts suspected that due process of law was being neglected.

CONTROLS OVER ADMINISTRATION

Administration has been frequently taxed with irresponsibility. It is true that some administrative bodies, especially the independent agencies, have from time to time won virtual immunity from control by other governmental units. Yet there are important means for the control of administration, which fall into four broad classes: administrative (or internal), legislative, judicial, and popular.

Administrative, or internal, controls

Controls within the Administrative Hierarchy: Administration is subject to a great number of controls from its own agents and officials. In a great number of cases, perhaps the most important control is the will of the individual employee that he perform his duties efficiently. Since administration is a hierarchical structure, higher officials may impose various instruments of discipline upon their subordinates, ranging from reprimand or censure to suspension or dismissal. It is true that on the lower levels the use of these instruments is restricted, since few employees at these levels may be disturbed in their employment for reasons of policy. However, on the higher levels administrators may be dismissed, or their resignations asked, for reasons of policy. Thus, for example, President Jackson needed to discharge two Secretaries of the Treasury before he could find one (Roger Taney) who would deal with the Bank of the United States as Jackson saw fit. In more recent times, President Truman secured the resignation of Secretary of Commerce Wallace for expressing views on foreign policy that conflicted with those of the White House.

Controls through Presidential Appointments: The appointive power is also a major implement of control. It is quite evident how the President can use this power with respect to the Departments. Congress, however, sought to protect the independent agencies from control by presidential appointment by fixing long and overlapping terms for commission members, and by requiring in the case of all important agencies that their membership be bipartisan. Yet, as has been seen, partisanship is not necessarily defined by party labels; some Republicans are closer philosophically to some Democrats than they are to some other Republicans. Hence a President through two or three appointments may, although adhering to the law, completely alter the principles dominating the work of the agency. On the lower levels, of course, the Civil Service Commission regulates almost all appointments.

Legislative controls

Congress has broad controls over administrative bodies. However, so far as policy-making is concerned, these controls have somewhat decreased in the past fifty years, as Congress has conceded to the President some of its initiative and renounced some of its detailed supervision of the agencies. For example, Congress has lately adopted the practice of granting funds for certain activities to the Defense Department for periods longer than one year. Furthermore, sometimes in response to the President's wishes and at other times in accordance with its own beliefs, an agency will work in such a way as to modify the general instructions of Congress. The manner of administration can make or break the aim of a statute. For instance, how meaningful are these first few words of a *New York Times* story on December 28, 1954: "The Eisenhower Administration has quietly dropped plans to ask Congress to modify the 'Buy American' Act which requires federal agencies to give preference to United States producers in placing orders. The official explanation is that the impact of the statute has been sufficiently eased by administrative action. . . ."

Yet Congress still creates agencies and endows them with funds for their operations; it wields its financial powers freely, even though committee hearings that concern these operations are certain to be well-populated with administrative officers anxious to testify respecting the needs of their organizations. Congress also may at any time alter the structure of administrative organs, as it did by creating the office of general counsel for the National Labor Relations Board (NLRB), to whom, under the pressure of anti-union interests, it gave sole power to initiate cases.

Congress, furthermore, sets the broad rules according to which administrative bodies shall function, and Congress may fix limits to the rule-making and adjudicating powers of these organizations. The Senate must confirm all appointments to high administrative posts. Congress may impeach the President and the other principal administrative officers; at the same time it can set, and has set, limits upon the removal power of the President with respect to the members of the independent agencies. Congress may also investigate the operations of administrative bodies; for example, a Senate investigation of the Reconstruction Finance Corporation in 1951 disclosed that some of President Truman's aides had brought pressure upon the Corporation to make loans to enterprises in which they were interested.

Judicial controls

The federal judiciary provides additional limits upon the federal administration. The prime concern of the courts with respect to administrative bodies is to insure that their actions are congruent with the rule of law. It should be remembered that Departments and independent agencies possess two types of powers: *ministerial* and *discretionary.* The ministerial powers are those that *must* be exercised; the discretionary powers are those that the administrators *may* exercise according to their own judgment. As an illustration, so far as the Post Office is concerned, the mail must be delivered, for that is a ministerial power; but how many daily deliveries shall be made is at the will of the Postmaster General, for that is a discretionary power. The courts are especially sensitive regarding abuse of discretionary powers.

Courts today cope with a great many cases emerging from a conflict of an individual or company with an administrative body, especially independent commissions. Courts enter a dispute when one party to an administrative controversy, feeling that the decision of an agency has been unjust, appeals his case to a higher tribunal. Courts have various methods for exercising their control. In some cases, the injured party may bring a civil suit; however, today most such cases come before the U.S. Court of Claims. In other cases that have been appealed, the court may issue an injunction forbidding the administrator to carry out an act. Then again, it may issue a writ of *mandamus*, ordering the administrator to exercise some ministerial power. Cases may be brought to the federal Court of Appeals, or even the Supreme Court, under the writ of *certiorari*. Sometimes the courts deal only with questions of law, holding that the administrative body alone is competent to determine the facts, and the court alone capable of establishing the law. Many observers demand that the courts use greater self-restraint to avoid transgressing beyond their competence into the region of fact, pointing out that the jurists may invite a hopeless volume of work if they insist upon retrying questions of fact.

Popular and pressure group controls

The people themselves have controls over administrative bodies. These controls may be either direct or indirect; that is, they can be brought to bear immediately upon the administrators, or they may come by means of public pressure upon Congress to alter some aspect of administrative structure or procedure. Public control may be exercised by one or more individuals who have no specific organization; or it may be implemented through a strong interest group. An interesting combination of pressures, public and otherwise, was imposed upon one administrative body, the Post Office Department, during the years 1953–1955. In 1953 the Post Office began to deliver circular mail (advertisements) bearing no other address than "householder" or "postal route patron" in all private mailboxes. This perhaps was a privilege extended businessmen as a form of subsidy that certain organized business interests had persuaded the Post Office to install. Soon, however, the general public—as an unorganized mass—began increasingly to express resentment at the delivery of this mail. At the same time the union of Post Office employees commenced uttering growing complaints about the added work connected with sorting and delivering this mail. One postman dramatized the situation by throwing away all the circulars he was to distribute on his route—a gesture that was, on a very small scale, an act of administrative policy-making; a judge contributed to the affair by doling out a very lenient punishment for what is ordinarily a serious crime. The Post Office reacted by abruptly terminating this service on April 1, 1955.

Certainly the current practice of admitting all interested persons to a hearing preliminary to the issuance of new administrative rules allows important groups to seek, and even to effect, controls over administrators. It is well to recall that such lobbying of administrators is not subject to as broad regulation as that imposed upon legislative lobbyists. The laws establishing some agencies—among them the Federal Maritime Board—require that lobbyists register with the agencies before attempting to deal with agency officers. However, there is no general law analogous to those provisions of the Legislative Reorganization Act that regulate lobbyists of Congress. The ultimate form of popular control, one that involves both individuals and pressure groups, is the ballot. The voters choose both the President, who is the chief administrator, and Congress, which creates, finances, and empowers all subordinate administrators.

QUESTIONS AND PROBLEMS

1. What are several distinctions commonly to be observed between federal Departments and independent agencies?
2. The independent commissions of government were called by one expert "the headless fourth branch of the government." What would you say in support of his term?
3. How is the General Services Administration organized and what are its functions?
4. Define the following forms of enforcement of the objectives of an agency: publicity; licensing; rule-making; adjudication.
5. How can the President control the operations of the Departments?
6. What controls does Congress exercise over the administrative agencies?
7. In what ways do the courts call administrative agencies to account for their actions?
8. What effects can public opinion have on administrative operations?