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# Administrative Responsibility in Democratic Government

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ADMINISTRATIVE responsibility is not less important to democratic government than administrative efficiency; it is even a contributor to efficiency in the long run. Indeed, it is tempting to argue that the first requisite is responsibility, and if that is properly instituted efficiency will follow. Elaboration of this point should be unnecessary in the era and under the stress of the events which now make up our days.

To the subject of administrative responsibility, Professor Carl J. Friedrich has made several interesting and sagacious contributions,<sup>1</sup> and he deserves our gratitude for having reintroduced its discussion among primary problems. Yet these contributions have by no means said the last word on the subject. Indeed, he has put forward a number of propositions which must arouse earnest dissent. In answer to an earlier contribution of his I said,

It is most important clearly to distinguish a "sense of duty" or a "sense of responsibility" from the fact of responsibility, that is, effective answerability. I am anxious to emphasize once again that the notion of *subjective* responsibility (in my definition of it), whether as intellectual integrity or general loyalty to the spirit and purpose of one's function, is of very great importance in maintaining the level of efficiency. It is stimulating and sustaining, like the will to believe. But we must first of all be perfectly clear about its nature in order that we may not burke the question of whether or not such responsibility is sufficient to keep a civil service wholesome and zealous, and how far, in its own nature, it is likely to break down so that political responsibility must be introduced as the

adamant monitor of the public services. For the first commandment is, Subservience.<sup>2</sup>

My chief difference with Professor Friedrich was and is my insistence upon distinguishing responsibility as an arrangement of correction and punishment even up to dismissal both of politicians and officials, while he believed and believes in reliance upon responsibility as a sense of responsibility, largely unsanctioned, except by deference or loyalty to professional standards. I still maintain my belief while in a more recent article<sup>3</sup> Professor Friedrich still maintains his, so far as I am able to follow his argument. I propose therefore to treat the subject in two divisions, first, a more extended version of my own beliefs and, second, a critical examination of his article.

## I

MOST of the things I have to say are extremely elementary, but since it has been possible for a writer of eminence to discount their significance I may be forgiven for reaffirming them. The modern state is concerned with a vast sphere of services of a mixed nature. They are repressive, controlling, remedial, and go as far as the actual conduct of industrial, commercial, and agricultural operations. The state, which used to be negative—that is to say which was concerned to abolish its own earlier interventions and reduce such controls as ancient and medieval polity had caused it to undertake—has for some decades now abandoned

<sup>2</sup> 51 *Political Science Quarterly* 582 (1936).

<sup>3</sup> "Public Policy and the Nature of Administrative Responsibility," in *Public Policy, 1940* (Harvard, 1940), pp. 3-24.

<sup>1</sup> "Responsible Government Service under the American Constitution," in Friedrich and others, *Problems of the American Public Service* (McGraw-Hill, 1935).

laissez faire and can be called ministrant. Its work ranges over practically every sector of modern individual and social interest, from sheer police work, in the sense of apprehending and punishing assaults on person, peace, and property, to the actual ownership and management of utilities. I need not dwell on this point further, nor upon the range and detailed intensity of the state's operation, nor the large percentage of men and women among the gainfully occupied population it employs in the strategic positions in society. The weight and immensity and domination of this behemoth, for our good as well as for our control, are well known to all of us. But academic persons are less subject to the power of the colossus than the worker, the economic entrepreneur, the sick and the needy of all kinds. The academic person is therefore likely to regard the weight of the administrator's hand as not needing to be stayed or directed by the public custodian.

Are the servants of the public to decide their own course, or is their course of action to be decided by a body outside themselves? My answer is that the servants of the public are not to decide their own course; they are to be responsible to the elected representatives of the public, and these are to determine the course of action of the public servants to the most minute degree that is technically feasible. Both of these propositions are important: the main proposition of responsibility, as well as the limitation and auxiliary institutions implied in the phrase, "that is technically feasible." This kind of responsibility is what democracy means; and though there may be other devices which provide "good" government, I cannot yield on the cardinal issue of democratic government. In the ensuing discussion I have in mind that there is the dual problem of securing the responsibility of officials, (a) through the courts and disciplinary controls within the hierarchy of the administrative departments, and also (b) through the authority exercised over officials by responsible ministers based on sanc-

tions exercised by the representative assembly. In one way or another this dual control obtains in all the democratic countries, though naturally its purposes and procedures vary from country to country.

What are we to mean by responsibility? There are two definitions. First, responsibility may mean that X is accountable for Y to Z. Second, responsibility may mean an inward personal sense of moral obligation. In the first definition the essence is the externality of the agency or persons to whom an account is to be rendered, and it can mean very little without that agency having authority over X, determining the lines of X's obligation and the terms of its continuance or revocation. The second definition puts the emphasis on the conscience of the agent, and it follows from the definition that if he commits an error it is an error only when recognized by his own conscience, and that the punishment of the agent will be merely the twinges thereof. The one implies public execution; the other hara-kiri. While reliance on an official's conscience may be reliance on an official's accomplice, in democratic administration all parties, official, public, and Parliament, will breathe more freely if a censor is in the offing. To convince himself of this the student needs to scrutinize once again the rather uncomfortable relationship between Sir John Reith of the B.B.C. and the public and Parliament<sup>1</sup> (Sir John was a man of moral hauteur), the deep shelter policy of Sir John Anderson's technical experts and parliamentary opinion thereof, and Sir John's Defence Regulations in draft and Parliament's attitude thereto.<sup>2</sup>

Democratic systems are chiefly embodiments of the first mentioned notion of responsibility, and dictatorial systems chiefly of the second. The leading textbooks by Germans on the Nazi system of government explain the essence of the Nazi system by a

<sup>1</sup> Cf. *Finer, "Personnel of Public Corporations," in The British Civil Servant* (Allen and Unwin, 1937).

<sup>2</sup> Cf. *Finer, "British Cabinet and Commons in War Time," 56 Political Science Quarterly*, (September, 1941).

slavish dressing up of Hitler's dictum that all authority proceeds from above downward, and all responsibility from below upward. But when responsibility gets to Hitler, where does it go then? Mussolini's essay on fascism is nothing but an exercise revolving around the central thesis that since One Man can at times represent the people more validly than any other arrangement, that One Man owes no responsibility outside himself. The Stalinite doctrine is "democratic centralism," which simply means that after a period of discussion the central authority, that is to say Stalin and a few self-chosen friends, decides the course of policy and bears no responsibility to an agency outside himself.

In the democratic system, however, there is either a direct declaration in the constitution of the primacy of the people over officeholders, whether politicians or employees, or else in authoritative documents or popular proverbs the constitutional omission is made good. Thus, in the Weimar Constitution, Article I declared the issuance of sovereignty from the people. Thus, the Committee on Indian Reforms of 1934 said, "so there arise two familiar British conceptions; that good government is not an acceptable substitute for self government, and that the only form of self government worthy of the name is government through ministers responsible to an elective legislature." And thus, we are all familiar with the essential meaning of the American dictum, "where annual election ends tyranny begins."

**D**EMOCRATIC governments, in attempting to secure the responsibility of politicians and officeholders to the people, have founded themselves broadly upon the recognition of three doctrines. First, the mastership of the public, in the sense that politicians and employees are working not for the good of the public in the sense of what the public *needs*, but of the *wants* of the public as expressed by the public. Second, recognition that this mastership needs in-

stitutions, and particularly the centrality of an elected organ, for its expression and the exertion of its authority. More important than these two is the third notion, namely, that the function of the public and of its elected institutions is not merely the exhibition of its mastership by informing governments and officials of what it wants, but the authority and power to exercise an effect upon the course which the latter are to pursue, the power to exact obedience to orders. The Soviet government claimed (in the years when the claim seemed profitable to it internationally) that it was a democratic government; but its claim was supported by two arguments only, that the government worked for the good of the people, their economic well-being, and that the people were allowed to inform the government of their will through a multitude of institutions. The Soviet government never sought to employ with any cogency the third and really vital argument that it could be made to conform to the people's will by the people and against its own will. This last alone is responsibility in democratic government.

Democratic government proceeded upon the lines mentioned because the political and administrative history of all ages, the benevolent as well as the tyrannical, the theological as well as the secular, has demonstrated without the shadow of a doubt that sooner or later there is an abuse of power when external punitive controls are lacking. This abuse of power has shown itself roughly in three ways. Governments and officials have been guilty of nonfeasance,<sup>1</sup> that is to say, they have not done what law or custom required them to do owing to laziness, ignorance, or want of care for their charges, or corrupt influence. Again there may be malfeasance, where a duty is carried out, but is carried out with waste and damage because of ignorance, negligence, and technical incompetence. Third, there is what may be called *overfeasance*,

<sup>1</sup>I use the terms nonfeasance and malfeasance in a common sense, not a legal sense—they are convenient.

where a duty is undertaken beyond what law and custom oblige or empower; overfeasance may result from dictatorial temper, the vanity and ambition of the jack in office, or genuine, sincere, public-spirited zeal. As a matter of fact, the doctrine of the separation of powers as developed by Montesquieu was as much concerned with the aberrations of public-spirited zeal on the part of the executive as with the other classes of the abuse of power. Indeed, his phrase deserves to be put into the center of every modern discussion of administrative responsibility, *virtue itself hath need of limits*. We in public administration must beware of the too good man as well as the too bad; each in his own way may give the public what it doesn't want. If we wish the public to want things that are better in our estimation, there is a stronger case for teaching the public than for the imposition of our zealotry. A system which gives the "good" man freedom of action, in the expectation of benefiting from all the "good" he has in him, must sooner or later (since no man is without faults) cause his faults to be loaded on to the public also.

As a consequence of bitter experience and sad reflection, democratic governments have gradually devised the responsible executive and an elected assembly which enacts the responsibility. Within the system, there has been a particular concentration on the subservience of the officials to the legislature, ultimately through ministers and cabinet in a cabinet system, and through the chief executive where the separation of powers is the essential form of the organization of authority. Where officials have been or are spoilsmen, the need for holding them to subservience is particularly acute, since the spoilsman has not even a professional preparation to act as a support and guide and guarantee of capacity. With career men, the capacity may be present. What is needed, however, is not technical capacity per se, but technical capacity in the service of the public welfare as defined by the public and its authorized representatives.

Legislatures and public have realized that officials are monopolist no less than the grand men of business who have arrogated to themselves the exclusive control of the manufacture or sale of a commodity and therewith the domination, without appeal by the victim, of an entire sector of national life. The philosophy and experience of the Sherman Anti-Trust Act have significant applications to administrative procedures in public administration. The official participates in the monopoly of a service to society so outstanding that it has been taken over from a potential private monopolist by the government. This monopoly is exercisable through a sovereign agency armed with all the force of society and subject to no appeal outside the institutions which the government itself creates. This is to be subject to a potentially grievous servitude.

How grievous can be surmised in one or both of two ways. One can reflect on the merits of competitive industry which satisfies the consumers best as to price and quality and variety while it remains competitive, so that the consumer can cast a more than daily vote most effectively for the producer he prefers by buying his goods or services, and expel the others from office by *not* buying from them. One can notice, too, how producers, on the plea of "service before self" and the like, attempt to escape consumer's control; and memories are stirred of Adam Smith's dig at traders who affect to trade "for the public good." Or, second, one can have experience at first hand, not merely of the coercive side of public monopolies, say the contract powers of a municipal electricity undertaking, but of its administration of charitable undertakings, say in the feeding of school children or hospital management. The conceit of Caesar making concessions *ex gratia* to "subjects" can be noticed too palpably.

To overcome the potential evils flowing from public monopoly, democratic governments have set up various controls. It is these controls, and especially their modern defi-



ciencies, which seem to have worried Professor Friedrich into a position where he practically throws the baby out with the bath. He feels that there is need of some elasticity in the power of the official, some discretion, some space for the "inner check," and he sees also that existent controls (either intentionally or by the accident of their own institutional deficiencies) do actually leave some latitude to the official. He argues therefore that heavy and, indeed, primary reliance in the making of public policy and its execution should be placed on *moral* responsibility, and he pooh-poohs the efficacy of and need for political responsibility. He gives the impression of stepping over the dead body of political responsibility to grasp the promissory incandescence of the moral variety.

Let us review the chief controls exercised over politicians and officials in democratic government, and their deficiencies and the remedy of these deficiencies. In traversing their inadequacies I am dealing with those loopholes for administrative discretion or the policy-making power of officials which have given Professor Friedrich so much concern. First, the legislative definition of the duties and powers of officials may not be precise because the legislators were not very clear about what they wanted. It is doubtful, for example, whether the planning clauses in the T.V.A. statute represented any clarity of purpose in the legislative mind. Legislative draftsmanship may be slipshod. Or the statute may be simply misunderstood, thus offering latitude to officials. If all the items of administrative determination arising out of the elbowroom allowed by these causes were gathered together they would no doubt be considerable. Since this latitude exists, it calls for one or both of the available remedies: the continuing control of the representative and judicial agencies over the official and an omnipresent sense of duty *to the public* on the part of the official. But the remedy is not, as Professor Friedrich suggests, the institution of specific legislative policies which may please the heart of

the technical expert or the technocrat. I again insist upon subservience, for I still am of the belief with Rousseau that the people can be unwise but cannot be wrong. The devices for securing the continuing responsiveness of the official are, of course, the law courts, the procedure of criticism, question, debate, and fact-finding, and parliamentary control of the purse within the assembly, and, in the U.S.A., the election of executive or administrative officials and their recall.

It has been suggested by Professor Laski that to overcome judicial bias in the interpretation of social legislation a preamble might be set at the head of every statute so that the intention of it should be rendered less mistakable.<sup>1</sup> Such a device might serve the purpose of making the official amenable to the legislature, except that I have grave doubts whether the legislature can express its intention any better in a preamble than it does in the particulars of the whole statute.

Next, the enormous congestion of modern legislative assemblies and the heritage of antiquated procedure mean that a sufficiently frequent review of legislation and its administrative outcrops cannot be secured to remedy, or to punish, or to act by power of anticipation on the official mind. But these are not insuperable problems and there is no need for us, seeing contemporary deficiencies, to jettison political responsibility prematurely.

Third, there may be a want of understanding by members of Parliament and congressmen of technical issues involved in the law and the administration, and this shortcoming has meant a leaning upon the supply of these things available in public employees. But the growth of advisory bodies, formal and informal, in the major governments of our own time has tremendously limited the need to rely wholly upon official initiative. Attention to the further development of advisory bodies is the line of prog-

<sup>1</sup> Committee on Ministers' Powers, *Report, 1932, Addendum.*

ress here, not surely the handing over of our fate to officials who, by the way, are themselves only too grateful for instruction by such bodies.<sup>1</sup>

It is true, further, that the exercise of the power of control by the legislature, such for example as Congress' detailed attention to and itemization of financial appropriations, may destroy movement, flexibility, and the like, on the part of the administration. This point is stressed by Professor Friedrich; queerly enough, he does not deduce from this criticism that a more rational parliamentary procedure is required, but that there is need of more administrative discretion. He even goes to the inexplicable extreme of proposing that some action is better than none, whatever the action is!

In short, these various drawbacks of political control can be remedied. They can be highly improved, and it is therefore unnecessary to proceed along the line definitely approved by Professor Friedrich of more administrative policy making. As a democrat, I should incline to the belief that the remedying of these drawbacks is precisely our task for the future. The legitimate conclusion from the analysis of the relationship between Parliament and administration is not that the administration should be given its head, but on the contrary that legislative bodies should be improved. Conceding the growing power of officials we may discover the remedy in the improvement of the quality of political parties and elections, if our minds are ready to explore.

**E**VEN THEN I am willing to admit an external agency could not attend to every administrative particular without introducing an element of coercion and fear into administration which might damage originality, joy in work, the capacity for creative suggestion, and day-by-day flexibility. No external agency could do this; and none that we know would want to. But because some latitude must be given—both owing

to the technical impossibility of complete political coverage, and the wise recognition that the permitted latitude can be used for technically good policy which though not immediately acclaimed or wanted may become so in a short while upon demonstration to the public—there is no need to over-stress the auxiliaries to political control. Such auxiliaries as approved by Professor Friedrich are: referenda by government departments, public relations offices, consultation of academic colleagues in order to temper "partisan extravagance," "education and promotional functions," the administrative scrutiny of a congressman's mail. These are harmless enough.

But when Professor Friedrich advocates the official's responsibility to "the fellowship of science," the discard of official anonymity, the entry of the official into the political arena as an advocate of policy and teacher of fact versus "partisan extravagance," the result to be feared is the enhancement of official conceit and what has come to be known as "the new despotism." It seems to me that in the article in *Public Policy* a theoretical aberration regarding the value of devices for eliciting public opinion, auxiliary to the medium of the legislative assembly, has led to pushing these auxiliaries into the principal place. Where the external, propelling, remedial, and punitive power of legislative bodies and administrative superiors acting after the administrative event, and upon the imagination of the official before it (and therefore relying upon fear), is weak, other techniques can be and have been added.

For example, statesmen have invited the expression of public opinion through letters, and the departments are deluged with complaints and, let us hope, occasional praise. The rise of the public relations officer has led to the education of public opinion and the evocation of that public opinion other than through Parliament. (But beware lest he become a tout!) The British Broadcasting Corporation, for instance, has set up various councils of listeners, and it

<sup>1</sup> Cf. R. V. Vernon and N. Mansergh, *Advisory Bodies* (Allen and Unwin, 1941).

seeks their advice—and no doubt at the same time explains to them why it is not really so bad as the public thinks it is. There is the inspectorial contact of the central government with the local authorities. A few months ago the Ministry of Information began to avail itself of the services of a number of people formerly employed in the Market Research Bureau to take samples of public opinion, and they came to be known as “Duff Cooper’s Snoopers.” Members of Parliament challenged the need for these, seeing that they themselves are channels of public opinion.

All these devices have their value, but let it be remembered that they do not and cannot commit and compel the official to change his course. Officials may, in spite of them, still think that what they are doing is for the good of the public, although the public is too ignorant to recognize what is for its good. However, the more the official knows of public reactions the better. My qualm is that the official is very likely to give himself the benefit of the doubt where the information he elicits admits of doubt, whereas when the legislative assembly asserts an opinion it also asserts a command. This is the very essence of the *Report of the Committee on Ministers’ Powers*—upon this, you may say, hang all the laws and the prophets. It said:

It is unfair to impose on a practical administrator the duty of adjudicating in any matter in which it could fairly be argued that his impartiality would be in inverse ratio to his strength and ability as a Minister. An easy going and cynical Minister, rather bored with his office and sceptical of the value of his Department, would find it far easier to apply a judicial mind to purely judicial problems connected with the Department’s administration than a Minister whose head and heart were in his work. *It is for these reasons and not because we entertain the slightest suspicion of the good faith or the intellectual honesty of Ministers and their advisers that we are of opinion that Parliament should be chary of imposing on Ministers the ungrateful task of giving judicial decisions in matters in which their very zeal for the public service can scarcely fail to bias them unconsciously.*<sup>1</sup>

<sup>1</sup> Pp. 78, 79. The italics are mine.

Besides these arrangements the official may be kept responsive to the will of the legislative assembly by all the devices of legal responsibility. This point need not be adumbrated in any detail as it has been the subject of so many recent analyses and proposals for reform in the standard works of administrative law. I need only refer to works like Port’s *Administrative Law* and John Dickinson’s *Administrative Justice and the Supremacy of the Law*. In addition, there is the regular intradepartmental discipline resting upon the professional prospects and career, the salary, the retirement pay, and the chances of promotion, transfer, distinction, and honors, or vice versa, of the civil servant, going right up the hierarchy to those who are in direct contact with the secretaries of departments and the chief executive in the United States and the permanent secretaries and the ministers in Great Britain.

Even when the best has been accomplished with all this mechanism and the rewards, punishments, and incentives by which it functions, there may be still a gap between the controls and those official actions which would give the greatest public satisfaction. We should do all we can to reduce this gap to its minimum. Where our powers reach an impasse we will be obliged to rely upon two ways out: the education of the official and the influence of his professional organizations.

As for education—which should be part of the official’s training before entry and then should be continued in various ways after entry<sup>2</sup>—besides the purpose of technical excellence, it should be shaped to make the official aware of the basic importance of his responsibility to the parliamentary assembly, and the errors into which he will be liable to fall unless he makes this his criterion. He should realize the dangers in the belief that he has a mission to act for the good of the public outside the declared or clearly deducible intention of the repre-

<sup>2</sup> Cf. *Finer, The British Civil Service* (The Fabian Society, and Allen and Unwin, 1937), pp. 243 *et seq.*



sentative assembly. No one in his right mind would deny the importance of suggestions persuasively presented by the expert; but there is a world of difference between acknowledging the value of such suggestions and following the path of increasing administrative independence simply because there is *faute de mieux* already some independence.

Again, my own studies in the field of the professional organizations of local and central government officials in Great Britain have taught me what a great power for the good can be exercised by them.<sup>1</sup> Besides keeping members up to the mark and up-to-date in the exercise of their profession, they do embody a sense of responsibility in the second sense in which we use that term, as devotion to the highest standards of a craft or to a special body of people in the community—such as the consumers of electricity or passengers on petrol or trolley buses, or the frequenters of public baths, or the payers of income tax. They engender and develop this sense of responsibility, and it is a valuable product. But even with this we must require principally and austere the subservience of the public official. Without this requirement, we shall gradually slip into a new version of taxation without representation. There will result the development of a profession or corporate spirit, and bodies which at first are beneficial in their freshness become what Rousseau and Hobbes have called “worms in the entrails of the body politic.” We shall become subject to what has, in a short time, almost always been to the detriment of the public welfare—producer’s control of the products, the services, the commodities which the producer thinks are good for the consumer and therefore ought to be produced at the consumer’s expense, though the consumer does not want the services or commodities in question and strongly prefers something else.

<sup>1</sup> Cf. *Municipal Trading* (Allen and Unwin, 1941), especially the last two chapters, for a development of this point.

## II

IN THE article in *Public Policy* to which reference has been made, Professor Friedrich takes a position radically different from my own as hitherto stated, though most of the facts to which both of us refer are common ground. Before turning to a detailed criticism of his thesis, it is useful to state his position in general. He argues (a) that the responsibility of the official that is of any moment to us today is not political responsibility but moral responsibility; (b) that the quality of administration and policy making depends almost entirely (and justifiably so) upon the official’s sense of responsibility to the standards of his profession, a sense of duty to the public that is entirely inward, and an adherence to the technological basis of his particular job or the branch of the service in which he works; (c) that the public and the political assemblies do not understand the issues of policy well enough to give him socially beneficial commands in terms of a policy; (d) that, in fact, legislatures and the public have been obliged to allow or positively to organize more and more latitude for official policy making; (e) that there are satisfactory substitutes for the direction of officials and information as to the state of public opinion through the electorate and the legislature in the form of administratively conducted referenda, public relations contacts, etc.; and, therefore, (f) that political responsibility, i.e., the responsibility of the administrative officials to the legislature and the public, is and should only be considered as a minor term in the mechanism of democratic government, so much so, indeed, that officials may rightly state and urge policies in public to counteract those advocated by the members of the elected legislatures.

Let us commence the critical discussion with a passage of Professor Friedrich’s on Goodnow’s *Politics and Administration*. In 1900 Professor F. J. Goodnow’s work, one of the pioneer incursions into a fairly untilled field, made the following distinction between politics and administration. “There

are then, in all governmental systems, two primary or ultimate functions of government, viz. the expression of the will of the state and the execution of that will. There are also in all states separate organs, each of which is mainly busied with the discharge of one of these functions." Professor Friedrich imputes to Goodnow "an almost absolute distinction" in this functional difference. As a matter of fact, Goodnow uses the term "*mainly* busied with the discharge of one of these functions," and deserves credit for the broad distinction.

The distinction in the present writer's mind is this. By the "political" phase of government we mean all that part which is concerned with eliciting the will and winning the authority of the people. The process is carried on differently in democratic and dictatorial states. The elements of coercion and persuasion differ in magnitude and kind, and the place of the electorate, parties, parliaments, and ministers differs. This process ends with a law; with the approval (by positive ratification or by lapse of time for rejection) of administrative rules based on the original statute; and with control of the application of the law. The distinctive mark of this political part of the governmental process is that its agencies are practically unfettered in their authority over the making of policy and its execution. Where a written constitution and judicial review are absent, these political agencies are bounded only by the hopes and fears arising out of the electoral process. What of the administrative side? Administration begins where the legislature says it shall begin. It begins where the administrator begins, and the legislature decides that. Administration may include the making of rules and policy, which *looks* like legislation or politics. But its essence is that the administrator, elected or appointed (and most usually in modern states the latter), cannot himself determine the range or object of that policy. He has authority, but it is a conditioned, derived authority.

Thus, in the governmental process in gen-

eral, there are agencies which are concerned with making and executing policy, and there is a descending narrowing latitude of discretion in the making of policy. The latitude is greatest where electorate meets legislature; it then tapers down through a descending line of the administrative hierarchy until the discretion left to the messenger and the charwoman and the minor manipulative grades is almost nil. There have been polities where there was an almost complete fusion of these functions, e.g., at some stages of Athenian democracy. But modern states are obliged at some point convenient to each in a different degree to distinguish them, with the first as authority and master over the second.

Professor Friedrich calls this distinction of Goodnow's (shared by all other authorities I can recall) "misleading," a "fetish," a "stereotype," in the minds of theorists and practitioners alike. Are we then to be permitted to offer worship only to fallacies? He produces the queerest explanation for this alleged "absolute antithesis" of Goodnow's. It is this:

That it is built upon the metaphysical, if not abstruse, idea of a will of the state. This neo-hegelian (and Fascist) notion is purely speculative. Even if the concept "state" is retained—and I personally see no good ground for it—the idea that this state has a will immediately entangles one in all the difficulties of assuming a group personality or something akin to it (p. 6).<sup>1</sup>

This explanation is surely very fanciful. Later on, Professor Friedrich is constrained to admit: "Politics and administration play a continuous role in both formation and execution [of policy], though there is probably more politics in the formation of policy, more administration in the execution of it." "More" is a delicious understatement. But the understatement is not intended; it is part of a thesis that the amount of policy made by modern officials is of very great magnitude, in terms of proposing and later executing with latitude of interpretation. But this is only a play on the

<sup>1</sup> Page references are to *Public Policy*, 1940.

words "making" and "policy." What important "policy" does any federal official "make"? Has any federal official more authority than to propose? Certainly we expect those who are paid by the public to think and propound solutions to do their job well. But this is nothing new. By misusing the word "make" to suggest instituting and carrying into the law of the land, and only by this torsion of meaning, can Professor Friedrich's thesis at all come into court—that administrative responsibility to the legislature, the real policy-forming body of the nation, is in modern conditions impossible or unnecessary.

Professor Friedrich then reiterates an earlier statement of his: "Nor has the political responsibility based upon the election of legislatures and chief executives succeeded in permeating a highly technical, differentiated government service any more than the religious responsibility of well-intentioned kings." He then says, "An offended commentator from the British Isles [who appears to be the present writer] exclaimed that if I imagined that to be true of England I was 'simply wrong.'" Yes! that the power of the House of Commons in permeating the British civil service, right down to its local offices, and making it responsive to the House as the master delegate of the electorate, is most effective, is true, is demonstrably true, and ought not be denied. Nor can it be compared in delicateness or constancy with the "religious responsibility of well-intentioned kings," which appears to be an enthusiasm of Professor Friedrich's, for he undertakes to defend it by history, though he does not do so. Does it hold good of the Tudors, Stuarts, and Hanoverians? If so, why has British history been one long resolute struggle for the supremacy of Parliament and the reduction of the monarch to a dignified cipher?

Professor Friedrich begins his article in *Public Policy* with some remarks on the Munich Pact, with the intention presumably of showing that administrative responsibility to Parliament is ineffective. He

offers it as evidence that "pious myth-makers" have no right to accept the claim that the formal dependence of the Cabinet upon the confidence of the House of Commons effectively insures responsible conduct of public affairs by officials, high and low. (He reverts to this example later also.) As a matter of fact, this example proves the exact converse of Professor Friedrich's intention. The Munich Pact only too well carried out the will of Parliament. Mr. Harold Nicolson, M.P., now Under Secretary to the Ministry of Information, even jeopardized his career by denouncing the hysteria with which the invitation to Munich and peace was received by Parliament. It is true that thereafter, as the consequences came to light, Parliament and people felt that the Government had been wrong—but they too were completely implicated. The revulsion of feeling caused the Government, under parliamentary pressure, to give up its appeasement policy and push on with civil defense preparations and rearmament.

Professor Friedrich argues that "even under the best arrangements a considerable margin of irresponsible conduct of administrative activities is inevitable." He is sanguine enough to continue (p. 4): "Too often it is taken for granted that as long as we can keep the government from doing wrong we have made it responsible. What is more important is to ensure effective action of any sort." Of any sort! This surely is exactly the doctrine to stimulate a swelling of the official head. Though I am not inclined to argue by *reductio ad absurdum*, such a phrase, if taken seriously, must encourage public employees to undertake actions which would very soon arouse the cry of Bureaucracy! and New Despotism! Friedrich himself tones down his own objugation shortly afterward, but does not discard it.

PROFESSOR FRIEDRICH has somehow come to believe that "parliamentary responsibility is largely inoperative and certainly ineffectual" (p. 10). Is he referring to the

policy-making powers of administrators, or the acts of the Cabinet? His criticism seems to apply to the Cabinet, and not to the subject of his essay, viz., the responsibility of *officials*, for, citing the case of Munich and "the last few years," he seems to be concerned mainly with a foreign policy of which he did not approve but of which a large majority of his "ineffectual" Parliament emphatically did. And then he claims the benefit of this demonstration, I suppose, for the thesis that in England the civil service is out of hand?

On this point there are two records which might be summed up as follows. On questions of foreign policy, the Government, misguided as it may have been (in my view as well as Professor Friedrich's), was steadily supported by a large majority in Parliament, and I should guess a large one in the country. As for control over the administration, has Professor Friedrich heard of Parliament's actions on the Unemployment Regulations of 1934, the reform of the Post Office, the reform of the constitution of the B.B.C., the special areas, the preparation of the scheme of civil defense, the partial success in getting a Minister for the Coordination of Defense, the overthrow of Sir Samuel Hoare, the speeding up of arms production? And, during the war, the successful pressure of Parliament for the removal of certain ministers, e.g., from the Ministry of Information, for more reasonable use of the powers of internment of refugees, its control over government contract methods, over appointments in the civil service, over the Defence Regulations proposed by the Home Secretary, over economic and fiscal policies and administration, and, finally, over the very existence of the Chamberlain Government itself? I have listed only a few of the outstanding successes of Parliament in controlling (a) the government in general, and (b) the proposals of administrators and their parliamentary chiefs before they were "made" into policy by Parliament.

The conclusion of this section of the essay (p. 7) reads: "Admittedly, many com-

mentators have dwelt at length upon the frequently irresponsible conduct of public affairs in Great Britain and elsewhere." This is of course true; they have; and they have been right. But that does not mean that the examples are many, important, or long continuing. Nor would any person claim perfection for any system. You do not prove the value of your enthusiasm by showing that there are some flaws in existing political arrangements. Rather is political science a comparative weighing of the imperfections of alternative consequences. Even so, this should hardly lead the author to the conclusion that runs like a scarlet thread throughout the entire treatment, that if political responsibility is imperfect it is to be cast out in favor of a sense of responsibility in the bosom of the official: "a sense of duty, a desire to be approved by his fellow officials, and a tendency to subordinate one's own judgment as a matter of course" (p. 8), a point that Friedrich cites with evident approval from shaky evidence given to him orally by a Swiss official. Without the existence of the Federal Assembly, for how long does Professor Friedrich think the Swiss civil service would remain in tune with the humor of the people and responsive to its wants?

Professor Friedrich then turns to that agitation against the civil service which was summed up in Lord Hewart's book, *The New Despotism*. Alas, for the thesis of the author! *The Report of the Committee on Ministers' Powers*, while showing that, certainly, our civil service was very useful, showed that only in a few respects, and those not very important or deep-seated, were its members escaping control. He seems to harbor an objection to the power which the parliamentary majority would have over the rule-making authority of the administrator though submitted to a committee of the House for sanction (p. 12). What is wrong with this? Even if a special scrutinizing committee is organized, why should not the majority views of the whole House prevail? What is wrong with the majority? As for



"the Henry VIII clause" (i.e., the power given by statute to the Minister heading a department to "remove difficulties" which are obstacles to the putting of the act into effect), this sounds very gruesome; but a glance at Mr. Willis' book on the *Legislative Powers of Government Departments* will show how trivial were the uses of it.<sup>1</sup> And Sir Cecil Carr has more recently shown that the hullabaloo was about very little indeed.<sup>2</sup> In the light of these authors and the distinguished membership of the committee, is not the suggestion that the Committee on Ministers' Powers "soft-pedals the real trouble" somewhat daring?

In the effort not to let reconsideration correct his first misconception of "responsibility," Professor Friedrich finds himself compelled to adopt quite an undemocratic view of government, and to throw scorn upon the popular will. I do not think for a moment that he really is antidemocratic, but his line of argument presses him to enunciate views which might lead to this suspicion. The error in his conception leads to an error in the consequence; and the error in the consequence is precisely what officials (not constrained by principle and institutions to the dictates of political responsibility) would begin to use as an argument to justify their irresponsibility: conceit of themselves and scorn of the popular will. Thus (p. 12)

The pious formulas about the will of the people are all very well, but when it comes to these issues of social maladjustment the popular will has little content, except the desire to see such maladjustments removed. A solution which fails in this regard, or which causes new and perhaps great maladjustments, is bad; we have a right to call such a policy irresponsible if it can be shown that it was adopted without proper regard to the existing sum of human knowledge concerning the technical issues involved; we also have a right to call it irresponsible if it can be shown that it was adopted without proper regard for existing preferences in the community, and more particularly its prevailing majority.

<sup>1</sup> Cf. also Finer, *British Civil Service*, pp. 217-230.

<sup>2</sup> *Concerning English Administrative Law* (Columbia University Press, 1941).

The answer to this argument is this. It is demonstrable that the will of the people *has* content, not only about what it desires, but how maladjustments can be remedied, and some of its ideas are quite wise. The popular will may not be learned, but nevertheless the public's own experience teaches it something, the press of all kinds teaches it more, and political parties and the more instructed members of the community play quite a part. "The people" consists of many kinds of minds and degrees of talent, not of undifferentiated ignorance and empty-mindedness. Legislative assemblies created by election, in which political parties play a vital part, also exist; and they are not so dumb. Their sagacity is not to be ignored or derided. Second, a policy which is based upon an incomplete or faulty grasp of technical knowledge is *not* an irresponsible policy, for to use the word "irresponsible" here is to pervert it by substituting it for the words "incomplete" or "faulty" or "unwise." It is surely wisest to say that the full grasp of knowledge is to be used by the official within the terms of the obligation and policy established for him by the legislature or his departmental superior; otherwise it looks as though an independent position were being claimed for the official. Nor is it wise to make responsibility to "the community" an addendum to a "proper regard to the existing sum of human knowledge, etc., etc." And, by the way, the state seems to have cropped up again in the word community!

"Consequently," continues Professor Friedrich, "the responsible administrator is one who is responsible to these two dominant factors: technical knowledge and popular sentiment. Any policy which violates either standard, or which fails to crystallize in spite of their urgent imperatives, renders the official responsible for it liable to the charge of irresponsible conduct." But just as surely there is no responsibility unless there is an obligation to someone else; no one is interested in a question of responsibility as a relationship between a man and a science, but as it involves a problem of

duty—and the problem of duty is an interpersonal, not a personal, matter. Responsibility in the sense of an interpersonal, externally sanctioned duty is, then, the dominant consideration for public administration; and it includes and does not merely stand by the side of responsibility to the standards of one's craft in the dubious position of a Cinderella. If the community does not command, there is no call for the technical knowledge whatever; and, however magnificent the grasp of technical knowledge and the desire to use it, it must be declared irresponsible whenever it becomes operative except under a direct or implied obligation. Many a burglar has been positively hated for his technical skill.

There is another consequence of his thesis which Professor Friedrich would not like, I feel certain, if he had developed its implications. He declares: "Administrative officials seeking to apply scientific 'standards' have to account for their action in terms of a somewhat rationalized and previously established set of hypotheses. Any deviation from these hypotheses will be subjected to thorough scrutiny by their colleagues in what is known as the 'fellowship of science.'" What is the force of the phrase "have to account for their action?" Exactly to whom? By what compulsion? Does this phrase mean only that there is left to the official the vague, tenuous reaching out of his qualms in view of the known or possible public opinions of the men with whom he studied or those who are the present leaders of the profession? Suppose he despises their grasp of knowledge and scorns their judgment—is he therefore irresponsible? Suppose that they are conservative, while he is one of a minority of progressive practitioners? When is he responsible and when irresponsible? When he follows the ancients or marches with, perhaps even leads, the pioneers?

This question takes us directly into the history of these professional organizations of colleagues, "the fellowship of science," the associations, the guilds, of medical men,

engineers, accountants, lawyers, and others. Even if such fellowship were fully organized to implement Professor Friedrich's wish, whom could the ordinary man trust for a better deal, the great osteopath, Mr. (later Sir as a mark of popular gratitude) Herbert Barker, or the elders of the British Medical Association, the organization which banned him; Whistler, Charles Ricketts, or the Royal Academy; an Epstein or the stone chippers favored by the Society of Sculptors? I do not err, I believe, in thinking that there are analogous instances in American experience, which Professor Friedrich could supply better than I can. But there is before us the judgment of the District Court of the District of Columbia regarding the American Medical Association's action against medical practitioners—their expulsion because they participated in a group medicine clinic. Which criterion: groupist or anti-groupist?

I do not deny all value to such guild organization; I affirm and applaud some of these organizations. Yet, appraised from the very angle of the theory which I am here opposing, they must be seen as broken reeds in a long-run view of governmental devices to keep men in the van of social progress, technically defined, and still less to satisfy progress as the populace, the consumer, asks for it. Professor J. M. Gaus, who is quoted in support of the claim that responsibility is professional, is by no means so zealous in the service of the notion as Professor Friedrich who quotes him, for he says: "The responsibility of the civil servant to the standards of his profession, *in so far as those standards make for the public interest*, may be given official recognition." I have italicized the proviso, and it is essential, I am sure, to Professor Gaus's view. Who would define the public interest—who could define it? Only the public, I believe, or its deputies.

PROFESSOR FRIEDRICH seems to be so obsessed by modern technology, and the important part which the knowledge of it must play in the establishment of policy,

that he seems to forget how old this problem is, and what the answer of the ages has been to the very problem he poses. Does he think there was no question of "technical needs" three hundred years or three thousand years ago, or of the relationship of those who provided the knowledge and service to those members of the public who were its consumers? Governments owned warships, weapons, sewers, baths, roads, and irrigation works, and even had mines and forests to administer, and domestic and foreign trade to regulate. The relationship of the public to the mysteries of religion and ecclesiastical procedures—a very important technique in the context of good living—was for centuries one of the most critical problems in the history of political responsibility. "The creative solutions for our crying technical needs," as Professor Friedrich calls them, have for centuries been offered by the experts of various kinds, and the verdict of mankind has been that they need the expert on tap and not on top. All important questions are begged by throwing in the word "creative." It is no news to tell us, as we are told here, that nature will have her revenge if her laws are not understood and followed in any particular piece of administration. Of course that is so. But there is a wider concept of nature than that which relates to interest in the "technical"; there is also the nature of man as a political animal. We are entitled to believe, from the reading of his millennial administrative history, that *his* nature, as well as physical nature, is thwarted where the primacy of public responsibility is challenged by blurred interpretations, theoretical and practical, of the term responsibility.

Nor is there any novelty in the fact that political responsibility (the importance of which Professor Friedrich admits in a scanty oasis of one paragraph in twenty-four pages) acts by its power on the official mind in anticipation of action by the sanctioning organs of popular control. In pursuance of his denigration of the British system of political responsibility he rather misinterprets the function of questions in the House of

Commons. Their principal function is not to inform ministers of public reaction to policy, but to discipline administration. Ministers know already through other procedures. Questions are a *force*. Only ask the officials who prepare the information for the ministers whether they are not in an anxious sweat until the House is appeased!

Why, this is almost the ideal instrument for exercising that power of anticipation over the officials' mind, and therefore upon his sense of obligation to the community, which indirectly implies an obligation to the expertness he commands. I say this with diffidence, since the article seems a little severe on British experience. Nor am I an idolator of every item of parliamentary technique as it now operates. It should certainly be improved; but it ought not to be scouted.

There are occasions when Professor Friedrich seems to admit the fundamentality of political responsibility, but the relapse certainly and fatally follows. Thus he says (pp. 19, 20): "The whole range of activities involving constant direct contact of the administrator with the public and its problems shows that our conception of administrative responsibility is undergoing profound change. The emphasis is shifting; instead of subserviency to arbitrary will we require responsiveness to commonly felt needs and wants." Whose is the arbitrary will? The parliamentary assembly's emanating from popular election? Let us beware in this age lest we destroy our treasure altogether because it is not the purest of pure gold.

I COME now to the last matter in which I care to take issue with Professor Friedrich, the relationship between administrative responsibility and the doctrine of official anonymity.

Professor Friedrich believes:

It must seriously be doubted whether technical responsibility, which, as we have shown, is coming to play an ever more important role in our time, can be effectively secured without granting responsible officials considerable leeway and making it possible

for them to submit their views to outside criticism. The issue is a very complex one. Opinions vary widely. People try to escape facing these difficulties by drawing facile distinctions, such as that officials might discuss facts but not policy. It might cogently be objected that facts and policies cannot be separated (p. 22).

The rejoinder to this statement in the first place is that it is possible in some cases at any rate to distinguish facts and policy quite clearly. For example, the government or the representative assembly in seeking a policy to deal with rural water supplies might properly expect to receive from an official a description of the existing situation, in terms of the total water resources of the country, the supplies and the sources of supply in various rural vicinities, what those supplies cost per thousand gallons, whether the nearest supplies beyond the jurisdiction of each unit need pumping stations or whether the water will come down by being piped, what are the costs of pumping and distribution in various other areas, and so on. What the assembly shall do about it, once these facts are before it, is a matter of policy. A wise civil servant, careful to preserve his own usefulness and that of his colleagues, and not reckless in the face of the always imminent cry of bureaucracy and despotism, would not urge a policy upon it. Still less would he use public advocacy to spur on his political chief or connive with reformist groups having a purposeful policy. He would rather confine himself to frank private demonstration of the alternatives and their advantages and disadvantages, to his political chief, or where the political system requires, to the committee of the assembly at their request.

That, however, is not all. If Professor Friedrich really believes that the severance of fact and policy is impossible, then a fortiori the civil servant should preserve his anonymity, on pain of bringing himself and his colleagues into partisan contempt. And Professor Friedrich does really seem to contemplate a war of all against all. He seems to approve of the fact that six reporters proceeded to a federal department whose head

had ruled that his subordinates were not to give interviews and violated the chief's rule by getting six different stories. Is this the way to promote official responsibility to the chief? To the technical standards? To the "fellowship of science"? Does Professor Friedrich approve of this piece of press impudence? Has he ever investigated what such impudence cost the T.V.A. in prestige, morale, and administrative efficiency in the old days? Nor can I view with equanimity the grave consequences of such proposals as this: "In matters of vital importance the general public is entitled to the views of its permanent servants. Such views may often provide a salutary check on partisan extravagances. Such views should be available not only to the executive but to the legislature and the public as well" (p. 23).

This doctrine surely is to set up the official against the political parties, to make the official the instrument of conflict between the "general public" (which I thought had already been thrown out of court earlier in Friedrich's article) and the legislature. He would set the official, I suppose, against the chief executive also, for he has been elected by the general public, and may utter as many "partisan extravagances" as he pleases in the course of a four-year term. It is not clear whether Professor Friedrich thinks that the civil servant shall pursue moral responsibility as far as a crown of thorns, whether once he has embroiled parties and public and legislature he must resign. As matters are, he would certainly be kicked out by the legislature or chief executive, and it would serve him right. For democracy is ill served by and justifiably abhors those who, appointed to be its servants, assume the status and demeanor of masters.

### III

THE FOREGOING critical analysis of Professor Friedrich's view on administrative responsibility as stated in *Public Policy* shows, I think, its untenability both in its main drift and in most of its particular secondary though related aspects. The



analysis reveals the following propositions as cogent and justifiable, in contradiction to Professor Friedrich's contentions.

Never was the political responsibility of officials so momentous a necessity as in our own era. Moral responsibility is likely to operate in direct proportion to the strictness and efficiency of political responsibility, and to fall away into all sorts of perversions when the latter is weakly enforced. While professional standards, duty to the public, and pursuit of technological efficiency are factors in sound administrative operation, they are but ingredients, and not continuously motivating factors, of sound policy, and they require public and political control and direction.

The public and the political assemblies are adequately sagacious to direct policy—they know not only where the shoe pinches,

but have a shrewd idea as to the last and leather of their footwear: and where they lack technical knowledge their officials are appointed to offer it to them for their guidance, and not to secure official domination; and within these limits the practice of giving administrative latitude to officials is sound.

Contemporary devices to secure closer co-operation of officials with public and legislatures are properly auxiliaries to and not substitutes for political control of public officials through exertion of the sovereign authority of the public. Thus, political responsibility is the major concern of those who work for healthy relationships between the officials and the public, and moral responsibility, although a valuable conception and institutional form, is minor and subsidiary.