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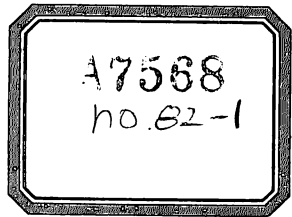
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**HISTORICAL CONSTRAINTS ON  
ADMINISTRATIVE PERFORMANCE: THE  
AGE FACTOR AND THE FRENCH,  
ITALIAN, and GERMAN BUREAUCRACIES\***

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**IGS Studies in Public Organization**

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University of California

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## FOREWORD

Through this series of working papers, the Institute of Governmental Studies, Berkeley, provides a channel through which scholars at work on problems of public organization may present their thoughts in a convenient form and without too much delay. We envision this series as a modest undertaking, but we hope that "Studies in Public Organization" will make some contribution toward an understanding of the properties that describe the variety of public organizational systems that exist throughout the world. We want also to note that no single formula will dominate; the series will contain papers that are theoretical, methodological, comparative, or historical. It is open to faculty and student contributions alike, not restricted to this campus, and its objective is to publish papers that engage important problems and present interesting ideas.

Committee on the Study of Public Organization  
IGS, University of California, Berkeley

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## The Diachronic Dimension of Bureaucratic Structures

There is general agreement in the literature concerned with the study of modern, constitutional democracies that public bureaucracies, staffed by tenured professional administrators, are responsible for the vast majority of policy initiatives taken by political organs, such as executives and legislatures. Granted that the permanent civil service, then, has a strategic role in policymaking processes, the central question is: How responsive is the bureaucracy to changing social needs and political demands, and why?<sup>1</sup>

Responsiveness--it should be pointed out--is in part a matter of constitutional arrangements. In all western political cultures, bureaucracies are subject to the formal, legal authority of electorally chosen executives and legislatures, a normative situation which has led to the formulation of the well-known theory of the separation of politics from administration, and of the role of administrators as neutral, impartial, *überparteilich* servants of the state. As is well known, this theory has been exploded as an *is* proposition by modern political science and public administration, which have stressed the crucial and central role of the civil servants in policy formulation.<sup>2</sup>

More recent investigations of bureaucratic responsiveness stress the norms and values of the higher civil servants themselves: it is not from normative structures prescribing impartiality that one can expect responsive behavior and performance in bureaucracies but, rather, from the commitment of bureaucrats to the purposes and values of the polity.<sup>3</sup> Most recent empirical research which tries to assess the conditions of behavior and performance in public bureaucracies is strongly influenced by this second orientation. Against a background characterized by numerous theoretical and technical slants, two major methodological trends are observable:

a) studies based on survey research techniques, whose premise is that bureaucrats' beliefs and values are a most powerful determinant of the extent to which bureaucracy can be made compatible with democratic and constitutional government, and which--frequently in the absence of a careful, clinical knowledge of the administrative agency or agencies chosen as empirical referents-- *assume* that opinions and attitudes of a political-ideological nature elicited



from respondents, are directly related to behavior and performance in the civil service;<sup>4</sup>

b) case studies, which stress clinical knowledge of structural referents and explicitly assume that the responsiveness of a bureaucracy to its social and political environment depends not only on the subjectively held values and beliefs of civil servants, but also on an array of other systemic factors.

In case studies, internal administrative efficiency, flow of information, communication systems, the strength and stability of representative institutions are of central importance in understanding the performance and capabilities of the civil service.<sup>5</sup>

Even though one cannot but recognize that the latter approach has been more fruitful in producing knowledge of administrative processes, a factor common to both approaches must here be underlined: they are solely concerned with the synchronic dimension of bureaucratic activities and totally neglect the diachronic dimension; i.e., they neglect the fact that nearly all national bureaucracies active today in western political systems are on the whole *old* institutions; that they are characterized by great age differentials; and that behavioral and performance consequences might be related to the age of given administrative structures. In sum, attention needs to be paid to the fact that organizational forms and types have a history, and that such history determines aspects of the structure and values of contemporary organizations. In particular, careful attention must be paid to the notion that "organizational inventions that can be made at a particular time in history depend on the social technology available at that time,"<sup>6</sup> as well as the cultural values and models definable as authoritative at that time, and that all tend to be perpetuated even in the face of radical changes in the external environment.

The background hypothesis here is that the behavior and performance of existing public bureaucracies are affected by historically conditioned structural and value determinants. Among modern political institutions, bureaucracies have been protected from external influence, separated from their environment, largely autonomous in their internal processes of reorganization, and professional and institutional socialization. As an example, as well as a first impressionistic test of this hypothesis, important differences are observable among western and

constitutional systems during the period that professional bureaucracies were first instituted. In continental Europe, professional administrations, whose structural character remains largely unchanged, were shaped by absolutist rulers in the 17th and 18th centuries and, therefore, can appropriately be called preliberal and preindustrial. In Britain, the institution of a professional bureaucracy was the product of a liberal regime and a modernizing economy. And in the United States, the consolidation of a merit administration took place in the context of mass democracy and advanced industrialization--a postliberal development.<sup>7</sup>

As a taxonomic framework, the use of such terms as preliberal, liberal, and postliberal, each corresponding to a different historical period, is merely suggestive; more precise sub-periods are identifiable, with notable differences from country to country. Within each country, variations are also observable among different administrative agencies, originating in different periods for the performance of different functions. Within each country, however, the probability is high that the original structural and value characteristics of the central administrative system affected and indeed shaped younger administrative agencies instituted for the performance of more "modern" functions.

What has been suggested so far does not imply a static rigidity of organizational models through time. Rather, as periodic reorganizations have occurred, modifications have been superimposed on older structural systems so that a given administrative organization is characterized by a series of chronologically successive and organizationally overlapping features. The older an administrative system, the more numerous are these strata; and the more intermittent, latent, and difficult to pinpoint is their influence on present behavior and performance.

To provide specificity to these general propositions requires that we examine some structural and value features which, though originated in distant times, continue to affect both the structure of contemporary bureaucracies and their present behavior and performance. The following, more concrete propositions, are based on historical exploration of the development of professional administrations in France, the German speaking countries, and Italy; and on an analysis of the literature of legal theory and doctrine in the 19th century (which constitutes the

main body of contemporary bureaucratic ideology on the continent).

To determine the point in time from which to begin our observations and our attempts at structural reconstruction, two conditions must be met:

a) the use of criteria of professionalization in the recruitment and selection of intermediate and high level personnel. (In this context, we say that personnel are professionalized when they are predominately chosen for technical abilities and not for any of the many possible ascriptive criteria that might be employed; when they are expected to serve on a full-time basis; and when they are also expected, *quamdiu bene se gesserint*, to serve for the entire duration of their working lives.) As Max Weber would have put it, here we are interested in the transition from traditional and patrimonial administration to legal-rational bureaucracy, and in the consolidation of the latter--a process, as we shall see, characterized by not many but momentous steps;

b) second, historical continuity between the period when a given administrative structure or system first emerged as a professionalized institution, and the present time.

### **The Organizational Properties of the Preliberal Stage of Legal-Rational Bureaucracy**

In broad terms, the two conditions just mentioned may be said to describe the most advanced continental polities during that period usually called mature absolutism and enlightened despotism; i.e., the period when the foundations of the modern state were being laid. Before proceeding to outline the characteristics and organizational properties of the administrative institutions which were built in this period, however, we draw attention to the fit between the socio-political conditions obtaining in the political system at large, and the emergence of a professionalized bureaucracy.

The foundations of the modern state under absolutist rulers, and the rise of professionalized bureaucracies can be said to be sides of the same coin: the two were linked by a nexus of mutual necessity. The most salient institutional trends of the absolutist state can be summarized as follows: (1) centralization; (2) uniformity in legislative and taxation policies; (3) law no

longer to be conceived (as in the preceding periods of the feudal polity and of the *Stände-staat*) as a framework of rules but, rather, as an instrument of rule, resting solely in the hands of the central monarch who was in his own right *legibus solutus*.<sup>88</sup> In domestic political terms this meant that for a central monarchy to succeed, it had to subjugate status quo forces that exercised considerable independent power; namely, the aristocracy, the Church, the municipalities, and the guilds. And beyond this, rulers who wanted to erect modern nation states faced serious international problems. The consolidation of the nation state involved first and foremost the definition of secure and clear borders which, in turn, might require long and costly wars fought by large, permanent standing armies that could be supported only through an extraordinary increase of the extractive capacity of the government.<sup>9</sup>

To attain these objectives, absolute monarchs employed a vast array of weapons among which two stand out: (1) at the formal-legal and ideological level, the novel concept of state-sovereignty (rightly defined by Jellinek as a "fighting" or "polemical" concept);<sup>10</sup> and (2) at the operational and organizational level, a professionalized bureaucracy vastly superior from a technical and political point of view to any of its predecessors and competitors, those imbued with patrimonial, traditional, and ascriptive criteria.

If the creation of a professional bureaucracy was a revolutionary innovation, so were the patterns of recruitment established by the absolute monarchs who successfully shaped the new nation states. To a very large--indeed predominant--extent, the members of the bureaucracy (the *intendants* of Louis XIV as well as the *Beamte* of Frederick the Great) were recruited from the rising middle classes. The bourgeoisie, already a protagonist in the world of business and commerce, had been prevented from reaching positions of importance in the public sphere, then characterized by ascriptive and patrimonial criteria of selection. But it had, however, already begun to develop and cultivate ideals of competence and technical training. And its children were, as a rule, the best and most talented graduates of the universities.

It was from this pool of talent that the monarchs recruited their civil servants, realizing, at one stroke, several desirable objectives: not only did they erect administrative structures of

unparalleled technical excellence, but they also created an instrument of government completely loyal to the crown--for the middle class service to the crown constituted the only readily available avenue to prestige, status, and power, and the best way out of a situation of social and political deprivation.<sup>11</sup>

Against this background note, we can turn to the identification, in a summary way, of those structural and operational features of the administrative apparatus which emerged during the period of absolutism, and are still observable in the contemporary bureaucracies of the continent.

No institution is ever a completely new "invention." Even if greatly innovative, it draws inspiration and examples from its cultural environment. Large monolithic organizations were already in existence when the absolute monarchs began to build their administrations, e.g., the Catholic Church and standing armies. Moreover, the guiding principles and organizational criteria of these institutions admirably fitted the political conceptions of the absolutist state: all shared the central structural feature of hierarchy. Hierarchy was the only framework for the division of work, and this led to extreme centralization. The fit between these properties and the ideological stance of absolutism was optimal. Hierarchy and centralization constituted the core of the concept of sovereignty then emerging. This was fortified by a mechanistic and rigid conception of systemic relationships that drew from the discoveries being made by the great scientific revolution then taking place. Physics and astronomy had been discovering a natural order which conformed to principles of symmetry and harmony, which were used to sustain hierarchic and monistic forms. It is not coincidental that Louis XIV was best known as the Sun King.

Nowhere in the fabric of the absolutist state are hierarchy and centralization better evidenced than in the administrative apparatus.<sup>12</sup> Its *ideal typus* will be outlined here by stressing those structural properties of the classic continental bureaucracies of today which *were already clearly observable* in the administrative apparatus of mature absolutism and enlightened despotism.

Candidates for administrative positions were selected on the basis of educational qualifications at a relatively young age, no previous practical training or work experience being required of them. Entrance tests were largely designed to ascertain a certain degree of "cultural literacy" rather than to assess and predict future performance along functional lines. Organizational participants were expected to spend their entire working lives in the public service, nearly always beginning at the bottom of the organizational ladder. Professional training was acquired within the public administration; the relevant skills to be learned on the job, and generationally transmitted to newcomers, who were, over time, slowly and safely coopted to higher positions. This peculiar form of recruitment, still vital today, is possibly the most foolproof mechanism for institutionalized resistance against change ever conceived.

Organizational subunits, or offices, were also ordered according to the principle of hierarchy; in the same fashion, incumbents of organizational roles were ordered according to a hierarchy of ranks to which differential degrees of material and psychological gratification were attached. Advancement along the career ladder was competitive, and promotions granted according to criteria which combined seniority, merit, and political sophistication; in more general terms, what we observe is a system of extrinsic rewards administered by the hierarchy of authority.

This approach to work performance and role assignment best demonstrates the inherent properties of what has come to be known as "generalism," and to this time the European central administrative structures are staffed by individuals whose training, qualifications, aptitudes and, in general, professional orientations are assumed to be *homogeneous*. Participants, thus, are assumed to be capable of playing all organizational roles that are formally associated with a specified rank. The organizational logic of such a structure does not allow for individual specialization, for assignments that permanently require functional specificity. On the contrary, the system works on the assumption that participants are *competent* vis-à-vis the different functional spheres that can be distinguished within the whole compass of governmental activity. Personnel policies, in fact, are oriented toward individual rotation among several functional

alternatives, and toward role interchangeability. To sum up, early recruitment--the source of which were the several strata of the educational system, and patterns of training, job assignments, and promotions--were intended to create generalists ideally capable of cutting across specialist lines of performance, and of adjusting without strain to diverse tasks while, at the same time, competing for higher status.

There is, however, another important structural characteristic: differentiation among participants takes place only along the vertical dimension. This implies that although the various tasks of a given administrative structure may be managed by a generalist, they are, at the same time, characterized by increasing degrees of difficulty that call for more expert and refined handling as one goes up the hierarchical ladder. Generalism--that is, the assumption of multifunctional omnicompetence--geared to the vertical dimension of hierarchy, leads to a second assumption: that of hierarchical *omniscience*. The whole structure is characterized by a preoccupation with the monistic ideal: administration is a monocratic institution articulated on a vertical sequence of superior-subordinate relationships in which the superior is the source of legitimate influence upon the subordinate. The cultural definition of roles is autocratic and authoritarian. The nexus between higher and lower participants is not mediated by considerations of functional or specific competence; on the contrary, it is based on a system of rights and duties, according to which superordinate roles are characterized by *rights* and subordinate roles are characterized by *duties*, as, e.g., obedience, deference, and loyalty.

There is, then, a confusion between the notions of right and ability, such that formal responsibility and competence are assumed to coincide. It easily follows that great importance is to be attached to suppressing conflict, to avoiding pluralistic orientations, and to preventing innovation. In this perspective, monocratic organization exerts complete control over the distribution of all internal resources--power, status, and money. What happens, then, is the superimposition of a status system on the hierarchical system, a situation that tends to convert the organization into a political system primarily concerned with the distribution of power, and impelled by personal rather than institutional goals.

As can be readily observed, those features of contemporary European administrations whose matrix is to be found in the period of absolutism evoke many of the features of legal-rational bureaucracy set forth in Weber's ideal type. Weber, however, associated the legal-rational type of administration not with mature absolutism (where we observe the partially latent and initial stage of bureaucracy), but with the more recent context of economic modernization and liberal constitutionalism (where we observe the fully manifested and perfected state of bureaucracy). But the transition from patrimonial to legal-rational administration has been a long one, and the structural foundations of the modern state in Europe were laid out in the preliberal and preindustrial age.

This is why *many* of Weber's typical features are recognizable. But not *all*; those that cannot be observed concern the normative stance of legal-rational bureaucracy. That is, while the structural features of absolutist administration already incorporate, to a very large extent, the formal setup of contemporary European administration, the conception of authority relationships is radically different. And the difference can be explained by modifications introduced in the administrative apparatus during the period of constitutional liberalism.

### **Organizational Properties and Institutional Values of the Liberal Stage of Legal-Rational Bureaucracy**

Recent historical literature underlines an important point: while the liberal revolution in Europe radically affected and practically rebuilt *a novo* political, economic, and social institutions (and more notably so in France), it also retained the administrative institutions inherited from absolutist and despotic regimes. Even Napoleon's most sweeping reforms can be seen as a rationalization of a machinery which largely existed, as making manifest through legislation and regulation what was, *de facto*, already operational.<sup>13</sup>

Again, a word of caution: the authority relationships of constitutional legal-rational bureaucracy and their organizational properties do not constitute an "invention" of bourgeois



liberalism; rather, they form a harmonious perfecting of trends that already existed in preliberal times, and, most notably but not exclusively, in that stage of late despotism known as *Polizei-staat*,<sup>14</sup> in which gradual transformations of the original concept of absolutist sovereignty, and hence, of administrative authority relationships are already discernible.

As is known, the "pure" concept of absolutist sovereignty and authority carries strong charismatic overtones. The law is the will of the monarch who is not bound by it, and can rescind it at any moment. There is complete identification between the person of the monarch and the state as a corporate entity (*l'état, c'est moi*). The members of the bureaucracy have no autonomous power vested in them by law; they merely carry out and execute the orders of the monarch, which can at any time be arbitrarily modified. This situation is emphasized by the fact that the bureaucrats have no tenure in office, but serve at the pleasure of the monarch. And yet, during mature absolutism, especially in the context of the *Polizei-staat*, even though the philosophical foundations of absolutism were still deemed to have full validity, the very complexity of the governmental machinery caused changes which began to undermine absolutist notions of authority. Enlightened despotism developed a new use of law, especially that concerned with the workings of the administrative system.

Its members no longer operated on a commission from the ruler, as the immediate executors of his individual commands but, on the contrary, began to function under the control of a specific body of legislated norms. Those norms articulated the state's power into a plurality of organs, of coordinate centers of decision and execution; they established for each organ precisely delimited competences, criteria by which to exercise them, standards by which to evaluate their exercise. The state had begun to turn itself into the instrument of its own, with a view to systematizing, coordinating, making predictable and machinelike its activities.<sup>15</sup>

As above, the principle that such rules and criteria are not binding on the sovereign power that issues them was preserved. This new law concerned matters internal to administration, and only bound lower offices and organs vis-à-vis higher ones. And yet this process constituted another momentous step in the direction of legal-rationality authority.

That important continuities exist between the governmental apparatus of absolutism and that of European constitutional liberalism should be clear. But the organizational character of

absolutist administration is our first archeological stratum. The salient innovations which the liberals introduced in public bureaucracies is our second--the bourgeois stratum.

The objective and result of moderate, post-Restoration liberalism in continental Europe was not so much a socio-political pluralism--as in the Anglo-Saxon experience--as the erection of the legal state, the *Recht-staat*. The bourgeoisie had become the central protagonist of the state and proceeded to model it to fit its programs of economic expansion and modernization. The *Recht-staat* was the result: order, certainty, reliability, equality before the judge and the tax collector, were the aims most urgently pursued. The bourgeoisie reacting against the capriciousness, arbitrariness, and unreliability of despotic rule; and against the fractiousness, lack of economic rationality, and the centrifugal trends of a fragmented polity,<sup>16</sup> sought to eliminate these conditions.

They were to be removed by introducing representative and constitutional government, and by creating an order based on the certainty of the law. And these goals were to be attained by a separation and depersonalization of powers through a general, abstract, logical-deductive system of legislated and codified law. To a large extent what the European liberals did amounted to an attempt to tame the beast of power by segregating it within a cage of norms.

But, to continue the image, the beast of power, even though caged, retained its beastly qualities: the concept of absolutist sovereignty was replaced by that of state sovereignty, equally pervasive and comprehensive. A system of general and legislated norms, specifying the rules to be followed by the introduction of changes, replaced the personal will of the monarch and constituted the keystone of legal-rational authority.<sup>17</sup> But, the administrative apparatus inherited from despotic regimes was retained practically unchanged in its morphological and organizational properties. Centralization, hierarchy, authoritarianism, unresponsiveness to individual citizens' demands remained the dominant characteristics of the bureaucracy. Indeed, during the first 30-40 years of moderate-liberal rule, the status of the civil service continued to be as dependent upon the arbitrary discretion of its political masters as during the preliberal regimes. (One should point out that the European liberals were facing formidable tasks dealing, as they

were, with fragmented polities, irrational and uneven economies and, in both the German and the Italian cases, the delicate problem of national unification. These conditions might explain the liberals' readiness to use public administration with an iron fist.)

Yet, against this largely unchanged set of structural features and value premises, a set of new guiding principles emerged to fit the old administrative machinery. The single most important innovation was a meticulous, detailed, systematic, and explicit regulation of the administrative apparatus, which extended to the relationships within the apparatus, to those between the apparatus and its political environment, and to those between administrative agencies and individual citizens. This complex regulation assumed the character of positive law and developed into a self-contained legal system, guided by rules of its own. A peculiarly European institution was thus born, i.e., the system of public and administrative law governing hierarchical relationships, to be sharply distinguished from the body of civil law, which regulated relationships among equals.<sup>18</sup>

A reading of public and administrative law and the impressive body of legal doctrine and theory concerned with it (a mirror of the political theory of the 19th century administrative state) is the best avenue for those who wish to identify and analyze what we have called the second stratum of European bureaucracy and its organizational properties.

What follows now is a succinct attempt to identify and discuss those guiding principles that still operate in contemporary administration. They have been grouped according to two analytical categories which while interrelated will simplify a complex task of description and interpretation: on the one hand, those principles that mainly affect the external slope of public administration; on the other, those concerned with its internal slope.

#### **The External Slope of Legal-Rational Bureaucracy: Politics and Administration**

Here our focus is on normative structures and institutional (and professional) ideologies having to do with the relationship between bureaucracy and its political environment. The great legal theorists of the 19th century elaborated two principles that are central for an understanding of bureaucratic performance and behavior then and now:

a) *Administrative impartiality*, i.e., the idea that administrative action *is* politically neutral.<sup>19</sup> This principle has exhibited, and still exhibits, great vitality: legal doctrine still treats it as an *is* proposition; public opinion treats it as an *ought* proposition; bureaucrats on the whole deem it to be descriptive of their role. Historically, this principle has been crucial in supporting legislation introducing job security for civil servants, and in arguing that a professional bureaucracy can equally serve political masters supporting different ideologies and sponsoring different programs and policies.

b) *The purely executive role of public administration*, i.e., the idea that the law--the authoritative decisions formulated by politically chosen organs -- embodies *per se* the substance of administrative action.<sup>20</sup> Bureaucrats merely need apply logical deductions to the law, and administrative decisions will ensue from it automatically. In other words, we have here the hypostatization of public administration as a passive machine, as an instrument in the hands of its political master, a view Wilson later echoed in his distinction between politics as art and administration as science,<sup>21</sup> and more recently reformulated along neo-positivist lines in terms of the dichotomy between political goals (values) and administrative means (facts).

As already pointed out, modern political science and public administration have definitely exploded both principles. We know now that civil servants are active protagonists in the policymaking process, enjoy a quasi-monopolistic control over information, act to strengthen their already strong position by exercising discretionary controls over policy execution, and engage in all of these actions either by representing their own values or siding with fractional groups and views. This is very important knowledge. But before we dispatch traditional principles as faulty descriptive propositions, it is important to remember that as normative propositions they have important effects; and as ideology they are still extremely forceful. Indeed, why these principles continue to be so forceful and why they emerge in the first place is an important question. The legal theorists who formulated them were formidable scholars, and something might be learned by searching their analyses.

My own reading of 19th century public law theory and philosophy, combined with access to some readily available data, leads to the conclusion that their knowledge was based on solid empirical observations and accurate descriptions of the political and social realities. How did they arrive at the "myth" of administrative neutrality? By observing the facts. And the facts of the 19th century liberal regimes are the following: (1) a suffrage limited to from 5 percent to 10 percent of the adult male population (upper middle classes); (2) a representative assembly seating well-to-do politicians basically agreed on fundamentals and free from head-on political and ideological combat; (3) a higher civil service recruited from the same social strata that the parliamentary ruling elite came from: in fact, there was much horizontal mobility between the political establishment and the higher civil service. This congruence, i.e., a social, economic, and cultural homogeneity, engendered a happy propensity to agree, a close rapport between politics and administration, leading to a condition which could easily be taken as administrative neutrality.<sup>22</sup>

Apart from neutrality, however, there remains the question of the purely executive and instrumental role of the bureaucracy. Again, the facts seem to be clear-cut: the period analyzed by the legal theorists is that of laissez-faire economics. The state does not interfere in the workings of society and economy. It is a state of regulation, not of intervention; a guarantor of order and a referee, not an activist agency. In this context, the functions performed by public administration could be described in logical-deductive terms, as a form of syllogism not dissimilar from that observed in the work of a judge acting as the interpreter of a codified system of law. By way of objection, however, it may be noted that in the cases of the three largest continental states--Germany, France, Italy--public administration was quite active in assisting and consolidating their industrial expansion (through fiscal incentives, banking policies, the erection of infrastructures, etc.). But we can nevertheless observe that the laissez-faire doctrine was rationalized into the legal and administrative system; and that intervention into the economies of these three states took the form of indirect regulation rather than direct management, a factor that enabled the public administration to be viewed as a negative and non-interventionist

apparatus.

The moderate, liberal, oligarchic regimes, even though of crucial importance as the key-stone of contemporary democratic political systems in Europe, lasted no longer, in their purest form, than 50-60 years. Yet their principles of public administration still possess an extraordinary vitality and normative strength. Despite empirical refutation in the modern time, they remain powerful ideological myths. To account for this, several factors should be examined.

The first has to do with the heuristic properties of the methodology more or less explicitly followed by the theorists of public law during those crucial years. This group of scholars built singlehandedly the system of public law. In a few decades, what once was an inchoate sequence of empirical phenomena, trends, and structures, apparently incapable of taxonomic discipline and inherent logic, was transformed into a streamlined, harmonious, elegant, and predictable normative system: public and administrative law, and the correlative structure of public administration. The system of public law took its place vis-à-vis that other, very old, repeatedly tested, and exalted system: that of civil law, whose prestige and power were without peer. Quite naturally, the scholars who set themselves the task of creating what became the system of public law, took the civil law as the source of authoritative guidance. Proceeding to model the new system after the old, they successfully reproduced the same characteristics of abstractness, harmony, internal interdependence, and logic which were the hallmark of civil law. In so doing, they also accepted and subsumed the central assumption of the system of civil law, that its validity is universal, unbounded by spatial and temporal limitations. While the civil law could, in broad strokes, be seen as a systematic interpretation and adaptation of a rediscovered Roman Justinian law to ever-changing situations (having been lost in the barbaric and feudal centuries, and found at the beginning of the Renaissance), it was, however, rediscovered, interpreted, and studied not as a document from a dead civilization, but as the *law*, universally valid, and applicable everywhere and always.

The scholars who built the system of public law comported themselves likewise.<sup>23</sup> After accurately and relevantly describing the new institutional structures which had taken shape after

the liberal revolution, after transforming them into a system, by abstraction and logical-deductive taxonomy, they imputed to these structures the same inherent qualities which had been assumed for Roman law: immutable and universal validity.<sup>24</sup>

The second factor that must be mentioned here is that the constructions of the legal theorists were not merely academic: most were important political figures, respected and powerful governmental consultants. They not only wrote the public law, but they designed the administrative system.

The third and last factor contributing to the myth is that public law professors are not only teachers, but practitioners as well. They not only do perpetuate their traditional verities by passing them on to their students (from whom a great number of higher civil servants are recruited), but as lawyers and governmental consultants they largely determine what public administration ought to be. In sum, legal theory and the field of public law are the most important factors in sustaining the ideological myths of the higher civil service.

#### **The Internal Slope of Legal-Rational Bureaucracy: The Primacy of Control and Security over Efficiency and Effectiveness**

Under this heading falls another set of structural and value dimensions which were also introduced into European bureaucracies during the moderate-liberal age, and which predominantly affect the internal workings and organization of public administration. Two central factors are to be emphasized here:

a) *The search for the non-redundant organization.* To characterize the systemic goals of the *Recht-staat* I have employed such terms as certainty, predictability, reliability. Moderate liberalism was bent on erecting a state where the abuses, the capriciousness, and the corruption of despotic rule would not occur again. Accordingly, the system of public administration was designed to insure maximum controllability; and the means used to realize this goal was the avoidance of redundancy. The "administrative rationality" that for so long a time has represented the dream of the American school of scientific management was an accomplished fact in the administrative structures of 19th century continental Europe. To paraphrase Martin

Landau, one might say that

the logic of (the *Recht-staat's*) position calls for each role to be perfected, each bureau to be exactly delimited, each linkage to articulate unfailingly. ... all to produce one interlocking system, one means-end chain which possesses the absolutely minimum number of links, and which culminates in a central point.<sup>25</sup>

In very general terms, there are three structural and ideological components to be observed in all large European bureaucracies, each oriented toward the realization of a streamlined, non-redundant, predictable certainty of performance, that can be succinctly denoted as follows:

1) The unifying role of such central, interdepartmental organs of control and coordination--as councils of state, courts of accounts, inspectorates of finance, central accounting offices, and technical advisory bodies--all designed to guarantee uniformity of standards, coherence in regulation, harmonious *ex ante* controls over expenditures.

2) At the departmental or ministerial level all decisions have been centralized in a limited number of coordinate top positions, all greatly removed from the actual operational and working environments. At this level, detailed procedures are written in such a way as to specify the most minute operations; and then sent to the different bureaucratic strata and subdivisions with a view to making these as separate and uncommunicative as possible. Delegation of decision-making, on the spot initiatives by field officials and subordinate offices, adaptation to different functional and local conditions are to be avoided at all costs--by means of that intricate network of rules which Crozier calls the "bureaucratic vicious circle."<sup>26</sup>

3) The judicial and formalistic bent of higher civil servants (which is the result of careful processes of professional socialization) can also be seen as a factor which constrains the use of redundancy, albeit a very subtle one. In European bureaucracies the public law professor is a central figure, acting as a *de facto* legislator, administrative planner, consultant, and teacher. Most higher civil servants are law graduates (the Germans have a poignant expression to denote this state of affairs in public administration: *Juristen Monopol*). In those European countries where the influence of civil law is greatest, the law is defined as a self-contained discipline



which can be understood and perfected by systematic study. On this foundation, a theoretical structure has been developed which is composed of general concepts of a high order of abstraction, arranged and interrelated in a systematic way. The parts of this construction are considered to be the "scientific" discoveries of legal scholars, whose raw materials are not, it must be emphasized, those concrete phenomena outside the legal system which may have legal consequences, but legal norms--the law itself. In synthesis, the creation of legal science has proceeded on two basic prescriptions: (1) that it ought to be insulated against the intrusion of value judgments and social facts; and (2) that it should not be concerned with the solution of specific and concrete problems (the empirical facts of actual and individual decisions) but, rather, with the elaboration of "scientific" structures so as to discover the nature of legal-administrative institutions. As should be clear, these are the characteristics invariably associated with legal formalism and positivism, and they are fully embodied in the system of public law. There are, additionally, two important corollaries to be mentioned: the principle that if legislation is enacted according to the rules established by the legislature and the constitution, its validity cannot be questioned (which implies a turning away from those aspects of culture that are not purely legal). The second concerns the principle of the completeness of the law (a principle strictly related to the ahistoricism of European 19th century legal science), and this means that the answer to any problem can be found in deductions from the general principles of the applicable legislation.

In sum, then, the properties of the system of public law are: a deliberate search for concepts of a higher order of abstraction, an effort to avoid confusing social and economic facts with legal objectives, the acceptance of positive law without questioning its justice according to other, non-legal criteria, with the final aim of insuring certainty and predictability, even at the cost of making decisions that are socially, politically, and economically dysfunctional.

This approach to administrative decisionmaking constitutes the subtlest ideological device for avoiding the temptations of redundancy and reinforcing the myths of neutrality and execution. Civil servants are socialized to develop a judicial bent of mind. Most decisions are

reached by hierarchically ordered panels. Agnosticism as a value prevents the intrusion of alien viewpoints in decisionmaking processes. Civil servants accept a fiction whereby they are presented legislation with a body of principles which they apply to a body of specific regulations of ready understanding and comparatively easy application. The fiction holds that he who applies juridical logic is automatically led to the correct decision.

b) *The unanticipated consequences of civil servants' rights.* In the stage of mass democracy and unimpeded unionization, an important innovation was introduced into the bureaucratic system through legislation that regulated the legal status of civil servants, establishing guarantees against hierarchical abuses and ultimately, for foolproof job security. That is, after consolidating its regime, the *Recht-staat* proceeded to extend to its public servants a set of guarantees not dissimilar in spirit from those which, at mid-century, had been extended to the citizenry: individual rights were protected under the law, they could only be modified by due process, and equality of treatment was guaranteed according to well specified rules.

Application of these principles to the internal governance of the civil service meant that "personnel administration" was not under the discretionary control of hierarchic superiors and political organs, but under the protection of the law and judicial due process. Recruitment and selection were no longer a function of pragmatic assessments of technical qualifications but the end result of a formalized process of competitive examinations, in which a judicial redress (in cases of grievance) played a prominent role. The same constraints applied to promotions, merit increases, disciplinary actions. Where once holders of superordinate positions enjoyed a wide discretion (in a context of face-to-face relationships) in the distribution of rewards and punishments directly related to the work environment and work performance, now a network of detailed and impersonal rules introduced automatic mechanisms for evaluation, promotion, and transfer of subordinates.<sup>27</sup>

The operational and political consequences of this new structure, most unanticipated, are to be seen in two areas. First, the emasculation of formal leadership. Superiors can no longer control and direct, via incentive and sanction, their subordinates, and the result has been a loss

of productivity, and a lessening of responsibility and individual initiative. Second, the combination of legislative regulation and judicialization of personnel practices has made the bureaucratic subsystem largely independent of the political system and its masters. And this has strengthened bureaucratic autonomy vis-à-vis the political organs of the system.

### **Crisis and Vitality of an Organizational Model**

The organizational structures whose idealized portrait has been sketched out in the preceding pages sailed--practically unchanged--into the middle 20th century. But, while the structures and value premises of public administration had undergone almost no modification, environmental conditions had changed dramatically as radically new and extremely diverse functions were added to those traditionally performed by public bureaucracies. It may be helpful here to enumerate these changes and to discuss their implications for bureaucratic performance and behavior.

The conditions surrounding the "external slope" of public administration have changed so radically as to be unrecognizable: limited suffrage and oligarchic liberal regimes have been replaced by universal suffrage democracies. The clubby atmosphere of moderate-liberal legislative assemblies, where well-to-do and culturally homogeneous parliamentarians transacted the business of government, sheltered from acute ideological and organizational constraints, no longer exists. Parliaments are now tightly controlled by bureaucratically organized and ideologically oriented mass political parties. Legislation is the product of a much more complex process of bargaining, characterized by a series of stumbling blocks reflecting deep value cleavages, social class differences, and institutionalized pressure groups. These crucial transformations have had momentous effects on the relationships between politics and administration; among the most important being the loss of the cultural and political homogeneity that once characterized political personnel and higher civil servants. Where legislative assemblies now tend to represent nearly all facets of society, and where executives must try to do likewise, the recruitment base of the higher civil service has grown narrower and narrower vis-à-vis that of political personnel. The recruitment base of the higher civil service differs greatly from one another in

different European political systems, but the fact remains that bureaucracies, once culturally and socio-politically capable of representing the political class, no longer do so. And, as cultural and political homogeneity between political and administrative personnel has disappeared, so has the consensual mode which had been the hallmark of oligarchic bourgeois regimes. The likelihood is much higher now that civil servants will work side by side with political masters whose ideology and policy orientations they do not share. And it is increasingly the case that administrative agencies tend to support policies that are at variance with the constitutionally legitimate political organs; i.e., they support policies that reflect their own values and interests, or those of social strata and/or interest groups with which they have developed organic and institutional links.

This is only part of the contemporary picture. The conditions that once justified the principle of administrative impartiality and neutrality have disappeared. The laissez-faire state has given way to the welfare state, to a state which massively and directly intervenes in society and is concerned with the management of the economy. The task of public administration is now not only quantitatively much larger, but qualitatively different. A formalistic, logico-deductive orientation to administrative decisionmaking may have been tenable in a context exclusively concerned with the maintenance of law and order. It is now, indeed, a fiction, and a managerial stance rather than a judicial bent of mind is needed. When public agencies are concerned with social welfare, managing the economy, running large industrial concerns, the top civil servants are daily confronted with decision situations of a pragmatic-inductive nature. Cost-benefit considerations, choices between alternative technical solutions nearly always leading to different political consequences, bargaining with clientele and special constituencies, are but a few examples of decision situations likely to occur in the normal course of administrative activity. No matter how detailed, well framed, and up-to-the-minute legislation may be, it cannot provide adequate solutions for problems that are complex, interdependent, and changing.

Two immediate consequences are noteworthy: the "modern" functions of the state have made it inevitable that the higher civil servants will play a central role in actual policy making.

And, the persistence through time of the fiction that the civil service merely executes what other agencies have decided, creates a smoke screen which keeps the level of awareness of what actually happens very low, and reduces the probability that relevant and indispensable controls will be effectively exercised.

This picture of growing and irresponsible power of the bureaucracy becomes even more alarming as we move to a consideration of the "internal slope" of public administration. The largely successful pursuit of organizational non-redundancy by the 19th century liberal polities has now become a most serious liability. The search for a streamlined predictability and reliability of administrative processes had been prompted by essentially negative considerations: in other words, organizational non-redundancy was an expedient contrived to prevent abuse, waste, and corruption. Legality, not flexibility; systemic completeness, not operational efficiency, had been the objectives. From this perspective, the design was successful.

Under modern conditions, however, the reverse is true. The continental bureaucracy of the 19th century has now become so many strangleholds on 20th century administration.<sup>28</sup> Delays, inability to adapt, failure to spend allocated money on time, ritualism, buck passing, and displacement of goals are some of the results. These results, paradoxically, have started a vicious circle, for the automatic response to these circumstances frequently takes the form of more and more stringent legal controls.

Because each part assumes so weighty a responsibility in the system, exacting controls are required. Rules, therefore, assume even more importance than they ordinarily do. And the more precise they are, the better the control. There is, then, an even greater possibility that strict and slavish adherence to regulations will obtain. The burden of error is sufficient to prompt a refusal to exercise discretion when an untoward situation arises. This holds *a fortiori* in a government organization which is bound by rules that have the force of law: for a mistake in interpretation may place action outside the limits of the rule and render it *ultra vires*. Under such structures there will neither be the "taking advantage of a technicality" nor of a "loophole" - and it is a practice such as this one which often constitutes an adaptive response to an urgent problem.<sup>29</sup>

Equally perverse consequences can be observed in connection with the legislative and judicial apparatus which has emasculated administrative discretion and leadership in personnel

matters, thus enhancing greatly the probability of an independent and irresponsible exercise of bureaucratic power. The higher civil service has become more cohesive, has developed a guild-like psychology, and exerts jealous controls over professional standards and criteria which look totally esoteric to anybody who is not a bureaucrat. As a recurrent slogan has it, the bureaucracy has become a state within the state.

NOTES

1. Robert D. Putnam, "The Political Attitudes of Senior Civil Servants in Western Europe," *British Journal of Political Science*, III (1973), pp. 257-290. The citation is from p. 257.

2. The classical discussion is by Carl J. Friedrich, "Public Policy and the Nature of Administrative Responsibility" in Francis E. Rourke (ed.), *The Administrative Process and Democratic Theory*, (Boston, 1970). For review articles cf. Robert L. Peabody & Francis Rourke, "Public Bureaucracies" in James G. March (ed.), *Handbook of Organizations*, (Chicago, 1965), pp. 802-837; and Mark V. Nadel & Francis E. Rourke, "Bureaucracies" in Fred I. Greenstein & Nelson W. Polsby (eds.), *Handbook of Political Science*, (Reading, Mass., 1975), pp. 371-394. Recent and innovative discussions are due to Martin Landau, *Political Theory and Political Science*, (New York, 1972), pp. 171-210; and V. Ronge, "The Politicization of Administration in Advanced Capitalist Societies," *Political Studies*, XXII (1974), pp. 82-99.

3. Cf. the seminal discussion by J. Donald Kingsley, *Representative Bureaucracy*, (Yellow Springs, Ohio, 1944).

4. As an excellent and representative example of this first trend, cf. Putnam, "The Political Attitudes."

5. Again as examples, cf. two classics such as Michel Crozier, *The Bureaucratic Phenomenon*, (Chicago, 1964), and Aaron Wildavsky, *The Politics of the Budgetary Process*, (Boston, 1964).

6. A centrally relevant theoretical treatment of the stability of organizational types over time is due to Arthur L. Stinchcombe, "Social Structure and Organizations," in March (ed.), *Handbook*, pp. 142-193. The citation is from p. 153.

7. For an exhaustive and persuasive analysis of the historical conditions accounting for the rise of a professional civil service in different political systems, cf. John A. Armstrong, *The European Administrative Elite*, (Princeton, 1973).

8. A concise discussion of absolutism set forth in terms relevant for the present analysis is that by Gianfranco Poggi, *The Development of the Modern State*, (Stanford, 1978), pp. 97-131.

9. Cf. Samuel E. Finer, "Military Forces and State Making" in Charles Tilly (ed.), *The Formation of Nation States in Western Europe*, (Princeton, 1975), 95 ff.; and Gabriel Ardant, "Financial Policy and Economic Infrastructure of Modern States and Nations," *ibid.*, 194 ff.

10. Georg Jellinek, *Allgemeine Staatslehre*, (Berlin, 1900), p. 47.

11. A vast body of historical literature deals with this phenomenon. However, one should not think that the middle class replaced the aristocracy in one clean sweep. Rather, even in those contexts where nobles continued to be heavily represented in the administrative elite, universalistic values tended to replace particularistic criteria in recruitment processes. This point is persuasively developed by Armstrong, *The European Administrative Elite*, pp. 73-92.

12. A compact presentation is in Poggi, *The Development*, pp. 196-118. The consolidation of modern administrative institutions in Germany is discussed by Hans Rosenberg, *Bureaucracy, Aristocracy, and Autocracy*, (Cambridge, Mass., 1958); in France, by Pierre Legendre, *Histoire de l'administration de 1750 à nos jours*, (Paris, 1968). For a comprehensive and masterful analysis of the development of modern administrative and governmental institutions in continental Europe, cf. Felix Gilbert (ed.), *The Historical Essays of Otto Hintze*, (New York, 1975), especially the essays presented under the heading 'Comparative and Administrative History,' pp. 157-356.

13. As A. Vandal puts it: "It has frequently been stated that he [Napoleon] organized the revolution. So far as public administration is concerned, one must state the opposite: he organized the old regime." *L'avenement de Bonaparte*, (Paris, 1936), II, p. 254.

14. The experience of the *Polizei-staat* has been carefully scrutinized by some of its protagonists. Cf., above all, Johann H.G. von Justi, *Grundsätze der Polizeiwissenschaft*, (Göttingen, 1756), and Johann von Sonnenfels, *Grundsätze der Polizei Handlung und Finanzwissenschaft*, (Wien, 1756). The standard work on the subject is still Fritz Hartung, *Deutsche Verfassungsgeschichte von fünfzehnten Jahrhundert bis zum Gegenwart*, (Stuttgart, 1954).

15. Poggi, *The Development*, p. 127.

16. For a characterization of the *Recht-staat*, cf. Frederic J. Burin, *The Rule of Law in German Constitutional Thought: A Study in Comparative Jurisprudence*, (Ann Arbor, Michigan, 1953).

17. Cf. Peter Badura, *Verwaltungsrecht im liberalen und im sozialen Recht-staat*, (Tübingen, 1966), 5 ff.; and Massimo Severo Giannini, "Profilo storico della scienza del diritto amministrativo," *Studi Saresesi*, XVIII (1940), 133 ff.

18. Badura, *Verwaltungsrecht*, p. 6.

19. There are differences of tone on this issue between French and German doctrine. Whereas, in France, impartiality was depicted as the outcome of a strict separation between administrative and political organs, the prevailing idea in Germany denoted impartiality as equality of bureaucratic treatment for all citizens regardless of their political opinions. Cf. J. Vivien, *Etudes administratives*, (Paris, 1852), 29 ff.; Paul Laband, *Das Staatsrecht des Deutschen Reiches*, (Leipzig, 1894), 100 ff.; and Carl von Gerber, *Grundzüge des deutschen Staatsrechts*, (Leipzig, 1880), 31 ff.

20. Maurice Hauriou, "L'ordre social, la justice et le droit" in *Aux sources du droit. Le pouvoir, l'ordre et la liberté*, (Paris, 1933), 44 ff.; and Gerber, *Grundzüge*.

21. Of course, one refers here respectively to Woodrow Wilson's "The Study of Administration," now in Gawthrop (ed.), *The Administrative Process*, pp. 77-85, and Herbert Simon's *Administrative Behavior*, (New York, 1976), Chapter 3.

22. During the period of oligarchic liberalism, public administration in continental Europe exhibited many of those traits that later prompted J. Donald Kingsley to develop the notion of 'representative bureaucracy' for the British case. Cf. his *Representative Bureaucracy*. For recent interpretations of the concept, cf. V. Subramaniam, "Representative Bureaucracy: A Reassessment," *American Political Science Review*, LXIX (1975), pp. 526-542.

23. H. Kauffmann, "Verwaltung, Verwaltungsrecht" in K. Stengel & M. Fleischmann (eds.), *Wörterbuch des Deutschen Staats -- und Verwaltungsrecht*, III (1911-1914), 717 ff., has traced the paths through which such great leaders in the field of public law theory as Laband, Jellinek, and Gerber linked their work to civil and Roman law.

24. A compact presentation of continental legal methodology can be read in Karl Larenz, *Methodenlehre der Rechtswissenschaft*, (Berlin, 1960).

25. Martin Landau, "Redundancy, Rationality, and the Problem of Duplication and Overlap," *Public Administration Review*, XXIX (1969), p. 354.

26. Crozier, *The Bureaucratic Phenomenon*, pp. 187-194.

27. *Ibid.*, pp. 214-219.

28. This picture of the effects of legalism on the performance of contemporary administration is certainly overdrawn, or "unilaterally accentuated," as will happen when an ideal-typical mode of description is adopted. No doubt there are notable differences among the bureaucracies of the three largest political systems in Europe. French administration--even though it is extremely centralized and characterized by almost exclusively hierarchical arrangements in the division of work--has consistently managed to avoid the pitfalls of extreme legal formalism. The reasons for this are mainly two: on the one hand, French jurisprudence is much more pragmatic than both its German and Italian counterparts. On the other hand, throughout its history, French administration has been governed by elites, where legally trained cadres were more or less balanced by technically trained cadres. For a historical reconstruction, cf. Armstrong,



*The European Administrative Elite*, pp. 176-199. For a recent analysis of the professional, among others, characteristics of the elite, cf. Ezra N. Suleiman, *Elites in French Society*, (Princeton, 1978).

*Juristen Monopol*, then, has been more strictly a feature of both the German and Italian bureaucracy. Developments after the second World War, however, indicate that the domination of German administration by legally trained personnel is rapidly decreasing, as a larger and larger proportion of executives is being recruited from groups with a technically oriented higher education. The following three works afford a panoramic view of German developments: John R. Gillis, *The Prussian Bureaucracy in Crisis, 1840-1860: Origins of an Administrative Ethos*, (Stanford, 1971); Herbert Jacob, *German Administration since Bismarck*, (New Haven, Conn.: 1963); and Renate Mayntz & Fritz W. Scharpf, *Policy-Making in the German Federal Bureaucracy*, (Amsterdam, 1975).

*Juristen Monopol*, on the contrary, exhibits an unbroken record in Italy, where its most dysfunctional consequences are evident. Attempts have been made to counter the negative effects of legal formalism on efficiency and performance: most of them have been effected by "hiving off" functions of socioeconomic intervention from central administration, and by reassigning them either to *ad hoc* governmental and quasi-governmental agencies or to the recently instituted regional governments. Results so far obtained are not encouraging: one observes either severe lapses in the criteria of accountability or an uncannily swift reproduction of the formal setup of the central apparatus, with all or many of its attendant consequences. For a discussion of some administrative aspects of regional devolution, cf. Giorgio Freddi, "Regional Devolution, Administrative Decentralization, and Bureaucratic Performance in Italy," *Policy and Politics*, 3 (1980). An authoritative account of the dismal performance of the central apparatus has recently been issued by the Ministro per la funzione pubblica, *Rapporto sui principali problemi della amministrazione dello Stato*, (Roma, 1979).

29. Landau, "Redundancy," p.354.

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