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CRITIQUE OF THE PROPOSED DEPARTMENT OF EDUCATION FROM AN ADMINISTRATIVE PERSPECTIVE

This paper presents some critical comments on the bill to establish a Department of Education. The comments deal with the administrative elements of the concept and of the bill rather than the substantive educational issues involved.

What follows are some observations which are not necessarily in the order of their importance; they are designed to raise questions and to suggest ways of thinking about some of the administrative problems underlying the proposal.

Departmentalism

Historically, the establishment of departments in the Executive Branch has been considered a major administrative action. The framers of the Constitution, familiar with the administrative difficulties of the Confederational period, were intent upon establishing centralized administrative leadership in the Executive Branch. In the first session of Congress, "organic" statutes were enacted establishing three great departments; Treasury, State and War. All the particular functions of the Federal Government, except that of prosecuting the

law and postal affairs were entrusted to these departments. Only two additional departments would be established before the Civil War; the Department of the Navy in 1798 and the Department of the Interior in 1849.

For over a century, most new functions would be placed in one of the existing departments with only a few "detached" agencies being established. Devolution of authority was usually accomplished through such devices as tenured appointments, but all within the departmental structure. With the creation of the Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887, however, the fragmentation of the Executive Branch began in earnest.

While the Executive Branch was undergoing this fragmentation, a counter-school of thought was emerging; the Presidential management school. The first major exponent of this view was Theodore Roosevelt. Herbert Emmerich, a latter-day exponent of the President as manager idea, gave Theodore Roosevelt high praise for his aggressive approach.

President Theodore Roosevelt, unlike McKinley, had firm views on presidential management. He was the undoubted originator of the concepts of reorganization as a continuing need of administrative management and as an executive responsibility. He thought that government should do things and that the President was the man to see that they got done. To get something done, anything done, and hopefully the right thing, is the perpetual struggle of the government executive. A kinetic and articulate personality, 'T.R.' was the living embodiment of Hamilton's 'energetic executive.' ^{1/}

^{1/} Emmerich, Herbert. Federal Organization and Administrative Management. University, Alabama, University of Alabama Press, 1971. p. 38.

The Administrative Management school, with its emphasis on the President as manager, would dominate the literature on public administration through the decade of the 1960s. In brief, they believed that the President ought to manage the Executive Branch and that his department and agency heads should be given considerable administrative authority of their own. Most functions should be assigned to agencies within departments.

The most recent expression of the doctrines of the Administrative Management school are to be found in the reports of the President's Advisory Council on Executive Organization (Ash Council) and the proposals of President Nixon in 1971 to reorganize much of the Executive Branch. The Council concluded that the Executive Branch was too fragmented, resulting in a lack of effective coordination in meeting public problems. The attempts to overcome this fragmentation through the creation of interagency committees -- they counted some 850 -- were judged a failure. Not only did these interagency committees tend to establish another layer of decision-making, and hence more confusion and delay, but they tended to further undermine the already tenuous authority of elected officials.

The concept underlying the Ash Council report to the President was that the achievement of more effective policy-making and administration would depend on the establishment of more centralized and politically responsible lines of authority within the Executive Branch. The Council advocated a "package" approach combining the various elements of the "New Federalism," e.g., revenue sharing, with Executive Branch reorganization.

As to restructuring the Executive Branch, the objective was to move away from the rather narrow, constituency oriented traditional departments towards broader, functional or general purpose departments. 1/

In his legislative proposals to Congress, the President sought to abolish seven existing departments (i.e., Agriculture; Interior; Commerce; Health, Education and Welfare; Housing and Urban Development; Labor; and Transportation) and create in their place four new departments (i.e., Human Resources; Community Development; Natural Resources; and Economic Affairs). Additionally, the functions of a number of independent agencies were to be absorbed within the new departments.

A "model" department would be one where the Secretary would be assisted by a small number of staff officers having department-wide responsibilities. Specifically provided were a Deputy Secretary who would serve as an alter-ego and principal overseer of internal management for the Secretary, two Under Secretaries, a number of Assistant Secretaries, and a General Counsel.

To provide means for a rational grouping of the large bureaus and programs to be inherited by the proposed new departments, the concept of the "Administration" was introduced as a first tier device for program direction. These organizations, patterned after the operating administrations in the Department of Transportation, were provided as management centers -- each with a major segment of the department's

1/ Dean, Alan. The Goals of Departmental Reorganization. The Bureaucrat, v. 1, Spring 1972: 23-30.

administrative program. These Administrations would be headed by Administrators with a grade higher than the Assistant Secretaries.

The combined use of cross-cutting staff officers concerned with functions affecting all elements of the budget, -- personnel, budget, and program administrators charged with directing important segments of the department's operating responsibilities -- were expected to facilitate decentralized operations while simultaneously providing for more effective Secretarial control and department integration. The above changes, to be made in the central office, would be accompanied by significant alteration of the field structure of the agencies. In most instances, it was anticipated that the regional directors of the department would be comprehensive supervisors representing the Secretary.

The point of describing this 1971 effort to reorganize much of the domestic side of the Executive Branch is to indicate that there was an articulated administrative theory underlying the proposals. In political terms, the objectives were to increase the ability of the Secretaries, and through them, the President, to determine the policy direction of the departments. This was believed to be possible only if the departments were large with several major Administrations reporting to the Secretary. It was believed, rightly or wrongly, that the essential problem for most agencies was that there was an alliance between the program officers and their constituents which effectively reduced the amount of impact that the politically responsible officials

could have over policy direction. This alliance, in their view, was a barrier to adaptability to changing circumstances.

The work of the Ash Council reached for the highwater mark of Presidential dominance over Congress in managing the Executive Branch and came at the end of that dominance.

Insofar as it is possible to designate a point in time that constitutes a change in the power relationship between Congress and the President, the year 1970 appears to be a watershed. While Congress had made forays into direct administrative oversight in the 1960s and had experimented with new types of government-sponsored enterprises outside direct Presidential supervision, e.g., ComSat, it was not until the defeat, through inaction, of the President's 1971 comprehensive reorganization proposals that Congress took this approach seriously. The combined practices of writing detailed specifications, including titles and functions for agency sub-units, into legislation, extending the confirmation requirement to additional, and lower offices, expanding the use of the legislative veto over administrative decisions, and the increased use of annual authorizations for programs have resulted in the development of a new relationship between Congress on the one hand and the President and the executive agencies on the other. Congress is now a much more active competitor in exerting influence over executive agency organization and policy than it was even a decade ago. One consequence of this changing congressional role and attitude towards the President as manager has been a further erosion of departmentalism in the Executive Branch.

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Dismantling of the Department of Health, Education and Welfare

The proposal for a Department of Education constitutes a rejection of the theory of administrative management which underlay the recommendations of the first Hoover Commission (1949), the Heineman Commission (1967), and the Ash Council (1971). All three commissions argued for large departments organized around general purposes and rejected the utility of narrow, constituency oriented departments.

While the concept of general purpose is difficult to define precisely, it does suggest that departments should have as their objective the achievement of certain policies, not merely the maintenance of relatively narrow programs. It also suggests that the Secretary should not be faced with a single set of interest groups, but rather should have a sufficient number of competing interest groups so that he is not beholden to any single set of groups.

The Department of Health, Education and Welfare is frequently accused of being "unmanagable" and hence the suggestion is to break it up into parts. No proof is offered for this assertion other than the usual recitation of bureaucratic "horror stories." Size is not necessarily a determining variable in managability. Many very small agencies are rightfully considered to be difficult to manage. Manageability is more related to factors such as validity of the concepts being implemented by the agency, its statutory authority, and the discretion given the top administrators. Is the Department of Defense, for instance, unmanagable?

We should remember that the proposal to establish a Department of Education is really a proposal to dismantle the Department of Health, Education and Welfare. If the educationists have their own department, will the medical profession also demand a department of its own? And the remnant, the social welfare and income maintenance groups would, by default, have their own department. It is not unreasonable to assume that by deciding to establish a Department of Education, Congress is really deciding on three new departments, not one.

The Secretary of HEW is able to consider policy, program, and budgetary priorities on a broad scale. The first tier of compromise and accommodation is within the Department, not between departments arguing as semi-sovereign units at the Cabinet level, or leaving all the compromising to the semi-sovereign committees of Congress. The President already has enough difficulties with developing a budget which accommodates his various departments and agencies without increasing the pressures from additional departments. Similarly, the Congressional leadership and Budget Committees already have enough difficulties in accommodating the desires of groups to the fiscal needs and requirements of the Nation without adding to the burden by becoming the principal arena for compromising between the competing demands of the educationists, the medical groups and the welfare groups. In short, the Department of Health, Education and Welfare has served an extremely useful administrative and political purpose and should not be destroyed without first recognizing the costs that are likely to be incurred.

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Why a Department of Education?

Why has the proposal for a Department of Education been brought up at this time? The principal reason normally given is that the President made a campaign promise to create such a Department and he has decided to keep that promise. To be sure, the idea has been around for a long time, but never really attracted much attention until recently. The reason was, in part, that it ran counter to the dominant public administration view on how the Executive Branch ought to be structured. Another reason that the idea never really had much backing was that the education field is not monolithic. There is no generally accepted philosophy of education. Many education groups see such a department as aiding only a few interest groups and the philosophies they espouse. Hence, the education community itself is very much divided on the question of whether a separate department is wise or not.

The new Department of Education will be very much wedded to the concept of narrow, categorical grant programs. The education field has been heavily fragmented into bits and pieces with each bit and piece having its own program and bureaucracy. On those rare occasions when some significant questions are raised, they have fought vigorously and successfully to keep out outsiders, a category which sometimes includes the President and Secretary. But the fights have not always been easy. They perceive, and probably correctly, that with their own department, they will be further protected from policy forays by outsiders.

The educationists promoting the department also believe that they have been short-changed in the budgetary process because most of their funds are appropriated by Congress. Their competing agencies in HEW are blessed with large amounts of "uncontrollables" in their budgets and never really have to worry about annual cut-backs; when it comes time to cut the budget, the cuts are made in the appropriated funding, not in the "uncontrollables." The educationists apparently believe that with their own department they will be less vulnerable to cuts by the Administration and Congress.

Consolidating Educational Functions

One of the standard justifications given for establishing a department is that such a reorganization will result in the consolidation of similar activities. When the Department of Transportation was established in 1966, a major argument in its favor was that it would consolidate certain similar functions then distributed in various departments and subject them to certain department-wide policies and priorities. A similar argument was given for the Department of Energy. When the Department of Education bill was considered last year, there was some consolidation of programs and agencies included in the legislation. This year, however, the amount of consolidation is minimal. This is almost a pure example of elevating a unit within a department to the status of department. The apparent objective is to first establish the Department of Education, and then go after certain of the more vulnerable programs in other departments.

Administrative Stagnation

The bill, as originally presented, is a blueprint for administrative stagnation. The amount of administrative detail in the bill is excessive. One of the main conclusions of the first Hoover Commission in 1949 was that effective management of departments required that Secretaries be permitted to make internal organizational and functional adjustments to meet changing circumstances without having to come to Congress and engage in the legislative process for each change. While there may be occasions when Congress does not approve of a change, there is always the opportunity to undo or alter the Secretarial change either by informal negotiations or by statute. In the meantime, in the great bulk of the instances, the Secretary will be able to make changes in the organization and function on a timely and incremental basis thereby enhancing the ability of the politically responsible officials to determine policy for the department.

This bill will straight-jacket the Secretary before the Department even gets underway. Notice that the several assistant secretaries are given specific titles and given responsibility for specific offices and functions within the Department. This wording means that if there are to be any changes, even a minor change in the title of the assistant secretary to indicate additionally assigned responsibilities, they will require a change in the legislation. Of greater importance, this detail

exceptions are impressive. (a)"The authority of the Secretary under this subsection does not extend to (1) any office, bureau, unit, or other entity within the Department established by statute or any function vested by statute in such an entity or officers of such an entity; (2) the abolition of organizational entities established by this Act; or (3) the alteration of the delegation of functions under this Act to any specific organizational entity." Furthermore, the Act provides that any of the twelve listed entities, e.g., Office of Consumers' Education, Teachers Corps, being continued by Act may not be consolidated, altered, or discontinued, or any functions vested by statute reallocated "unless a period of ninety days has passed after the receipt by the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of such proposed action."

Two of the persistent complaints of Members of Congress is that their time is being taken up by issues of administrative detail and that more and more issues are being resolved in their names by staff. This type of detail in legislation is a prime example of the cause of these complaints. Congress has gotten into administrative matters

and is suffering the consequences. Another underlying cause of this detail in legislation is a basic distrust of the President and administrative leadership. Yet, distrust begets irresponsibility. It has become more and more difficult to find and retain competent administrators. They come, stay a short time, and then leave for lucrative private businesses. The professionals become more and more discouraged as they watch the parade of amateur administrators, often selected for all the wrong reasons, and the increasing incursion of Congress into their administrative life. Congress may decide to be involved in administration, but if it does, then it should set aside the time and resources involved in performing this responsibility.

Personnel Ceilings

Apparently simple and innocuous provisions in bills frequently have unanticipated and undesirable consequences. In this bill, for instance, (and here again the Senate "marked up" bill must be checked) there is a Section calling for an Annual Authorization of Personnel. The purpose of this provision is to establish an annual ceiling on the number of personnel in the Department. This would appear to be a laudable goal. But, this process involves a hidden cost. The recent Civil Service Reform Act provided a personnel ceiling for the entire government. Since the political objective will be to keep this official figure low, the Congress and the agencies may find acceptable ways to avoid the ceiling. Indeed, a considerable political enterprise has become "How to Get Off

and Stay Off the Budget and How to Avoid Civil Service Restrictions."

The winners are those who can come up with ways to have public functions performed by entities financed by the government but not considered to be government agencies.

The proliferation of government-sponsored non-profit corporations and organizations is presently a major administrative problem in government. Departments now contract out to these entities increasing numbers of their programs. In effect, Congress states that it wants some program performed and monies spent, but may be unwilling to provide the departments the personnel to perform these functions. Therefore, the departments find private contractors to perform these public responsibilities. They "delegate" their managerial responsibilities to private firms. The problems and questions raised by these practices are properly of concern to an increasing number of persons. What should be recognized is that the process of placing ceilings on personnel while increasing the number of programs and their scope, impells the departments to go outside to contract with non-profit firms. The legal problems alone, in such arrangements e.g., conflict of interest, have raised significant questions regarding their probity as well as wisdom.

Advisory Groups

In recent years there has been concern about the number of advisory groups in the Federal Government. There have been partially successful efforts to decrease their number, only partially successful because the agencies, have discovered the subcommittee. Along with the decrease in

numbers of full advisory committees, however, has come a trend towards making these advisory committees "more representative." Sometimes, however, the desire to have an absolutely "representative" advisory body leads to extraordinary lengths. The Intergovernmental Advisory Council on Education authorized in this bill illustrates the problem.

While questions may be raised about its functions, the focus here is just on the membership. (Once again, check the most current bill) The Council is to be composed of 22 members appointed by the President. Eight of the members must be from among State governors, legislators, boards of education (both elementary and secondary and postsecondary), and chief education officials (both elementary and secondary and postsecondary). Eight members must be from among local or regional elected government officials, local boards of education, public and nonpublic school administrators and tribal governments. Two members must be from among governing boards of public and nonpublic postsecondary institutions; and four members must be from among the public, including parents, teachers, students, and public interest groups. Finding people to fill these categories, who are also competent and interested, would be a major task under any circumstances.

The President, however, finds his burden even more weighty because he is required to find these people only after consulting with various organizations representative of the groups specified above. The bill then goes on to list certain groups which must be consulted, in addition to any others that the White House might find useful. The required groups

of administrative include the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors. And if this is not enough, "not more than eleven of the members of the Council may be members of the same political party."

It could be argued that these provisions of the bill are a bit detailed and constraining on the President and the Secretary. Since the Council is given rather extensive authority and responsibilities, the Secretary may find that he is faced with an impressive array of critics.

Conclusion

The establishment of a department in the Executive Branch is a major event in our history. It is one that should not be taken lightly. The burden of proof that a new department is needed should be on those who propose the department. At a minimum they should provide reasonable proof that the agencies currently administering the programs are doing so in an inefficient and unacceptable manner and that the problems are not conceptual, but rather organizational. Having proven that, they then should be required to prove in a reasonable manner that the organization they are proposing will address the administrative problems in a way that will lessen or eliminate the problems without foreseeable and improvident consequences. Defenders of the proposal should be open to discussion of the political and administrative implications of their

proposal and not rely solely on the recitation of the age-old litany prescriptions. All proposals are supposed to result in "more economy and efficiency" in operations, elimination of "overlap and duplication," and "greater responsiveness" to the needs of the public. Having said this, what else is the reorganization expected to do?

The problem with this proposal to establish a Department of Education is that it is based on questionable administrative theory. It will be a narrow, constituency based department, highly responsive to a relatively small interest group constituency. It will be rigid in organizational structure with a weak Secretarial office. Changes will be difficult to accomplish internally and there will be little opportunity for top elected officials to influence the development of educational policy. Congress will be forced, because of the detail in the legislation, to become involved in administrative questions better left to the Secretary and the President. All in all, it is a bad idea at the wrong time.

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