

If the principle of agency responsibility is to be applied, it follows that authority to develop improved procedures should not be lodged in some single functionary outside the agencies, with powers of command. Although there may be no current proposal to establish an officer in the Federal service like the ombudsman in Scandinavian countries, the thought has been discussed in professional literature, and the idea has seemed plausible to some. However workable such an institution may be abroad, it does not fit into the context of American political experience, and I do not think that it would fulfill the hope it stirs in its supporters. The agencies need such a monitor much less than they need encouragement and the means to improve their own practices.

The concept of the Administrative Conference serves the principle of agency responsibility especially well. Such a Conference should be primarily an agency affair, a center at which agency officials can communicate with each other about common administrative problems, a clearinghouse, a forum for the exchange of information and ideas, an institution to facilitate self-improvement. The Administrative Conference established under Executive Order 10934 satisfied all of these expectations, and the spirit of cooperative enterprise among the agencies was remarked upon by many who observed the Conference in action.

The second principle, closely linked with the first, is the cooperative self-improvement by the agencies should not be equally shared with spokesmen for private groups. Although lawyers in private practice have an understandably keen interest in the fair and efficient conduct of agency proceedings, I think that their proper functions in this domain are assistance, expert advice, careful and responsible criticism, and availability when needed for these contributions of service. Performance of these functions with willing objectivity can aid the growth of sound administrative practice in many useful ways. If they are to be regarded as equal partners with agency heads in the execution of officials responsibility to improve procedure, their partnership tends to confuse the helpful distinction between the public and the private interest, and to make uncertain the respective roles of Government and guild.

The meaning of this principle for an Administrative Conference has two dimensions. First, there does not seem to me to be much warrant for the assignment of 5 places in an Executive Council of 10 to "members of the bar in private practice," as is proposed in the suggestions of the Special Committee on Legal Services and Procedure of the American Bar Association. According to that proposal, private lawyers might comprise a majority of the Executive Council, or even hold all 10 seats, since the language of the reservation for private practitioners is that the number shall be "at least five." Since the special committee also provides that the Executive Council determine the time and agenda of the assembly of the proposed Administrative Conference, and that it propose bylaws and recommendations, appoint members of committees authorized by the bylaws and regulations of the assembly, make recommendations to the Assembly or to any of the committees appointed by the Council on any subject germane to the purposes of the Conference, and approve or revise the budgetary proposals of the Chairman of the Conference, it is clearly possible that purely private persons, in control of public funds, might be endowed with public authority to deal with official agencies.

Second, there does not seem to be much warrant either for the assignment of a possible 50 percent of the seats in the Assembly to "members of the bar in private practice," or to limit the representation of the agencies in the Assembly to 50 percent. Under this proposal, it would be theoretically possible to give lawyers in private practice 50 percent of the seats in the Assembly, to restrict agencies to 25 percent, say, and to award the other 25 percent to "scholars in the field of administrative law and government, and others specially informed by knowledge and experience with respect to Federal administrative practice and procedure." With a possible majority in the Council and a working plurality in the Assembly, lawyers in private practice would dominate a statutory institution whose chief justification should be that it helps Federal agencies to help themselves.

The third principle that should govern the design of an Administrative Conference, as I see it, is the existence of conditions that favor steady leadership by a Chairman who is vigorous and imaginative, dedicated and knowing, firm in purpose yet moderate and patient in temper. The Administrative Conference of 1961-62 was extremely fortunate to have the wise and skilled leadership of Judge E. Barrett Prettyman, and the Chairman of any successor Conference will make high marks if he can equal the standards for the position set by the per-