The politics-administration dichotomy : a reconstruction

Overeem, P.

2 | Conceptual Origins

"[T]he perception of a distinction between politics and administration is not simply an accidental result of a certain period of American history, to be put aside as fiction or nonsense. The distinction is writ deep in several millenia of Western history." (Waldo 1987: 98)

2.1 'Beyond woodrow wilson'

According to the standard account in Public Administration handbooks and textbooks, the politics-administration dichotomy originated in the late nineteenth and early twentieth century. The names of Wilson and Goodnow in particular are associated with the birth of the idea. Except for a sketch of the particular context in which these authors developed their thoughts – Reform and Progressivism in America – most accounts of the dichotomy take off discussing its merits and demerits without more historical introduction. There are some examinations of the Americans' mostly non-Anglophone intellectual antecedents (Martin 1987; Miewald 1984), but few efforts have been made to trace the origins of the dichotomy itself and particularly to explain which ideas have made its articulation necessary and possible (the only exception is Nieuwenburg and Rutgers 2001). In order to at least partially repair this neglect this chapter traces back the origins of the dichotomy "beyond Woodrow Wilson" (Rutgers 1997).

The focus here is on conceptual rather than practical origins. This is not to deny that on both sides of the Atlantic practical and historically contingent circumstances have often provided the most immediate motives to articulate the dichotomy. I already mentioned the Reform Movement and the closely related Progressive Movement.[1] The battle against the Jacksonian spoils system is commonly regarded as the most important motivation of the attempts to 'take politics out of administration' (Hoogenboom 1961; Rohr 2003), but there are

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[1] These two movements, often treated together, are better seen as two phases in one process. As Rosenbloom has explained, the Reform Movement in the 1870s and 1880s concentrated on the relatively specific problems of political patronage, the moral character of the civil service, and the political leadership of the nation, and the Progressives (from the 1890s until the 1920s) subsequently dealt with the broader issues of adapting American government to the conditions of mass immigration and industrialization and of building the administrative state (2008: 57-58).

other practical origins as well. Rugge has argued that in nineteenth century Europe, the politics-administration dichotomy not only had a "long-lasting anchorage in the doctrine of the separation of powers" (a conceptual origin), but also emerged from two practical circumstances, namely first "the permanence of some *ancien régime* features" such as "the persistent influence of the crown over the bureaucracy," and second the "growing functional differentiation between the profession of the politician and that of the bureaucrat" necessitated by the increasing scope and complexity of government activities (2003: 179). Undoubtedly, historical study could expand and refine our knowledge about such practical origins of the dichotomy much further.[2]

My concentration here on conceptual rather than practical origins of the dichotomy therefore stems not from a denial of the importance of the latter, but from three other considerations. First, the practical motivations behind the formulation of the dichotomy, although far from fully understood, have received at least some attention (especially in America), but the historical study of its conceptual origins is, as noted, still virtually nonexistent. Therefore it seems particularly compelling to contribute to the latter. Second, although practical circumstances have certainly stimulated the articulation of the dichotomy, the reverse is also true: the conception of the dichotomy itself has also made certain practical arrangements possible. For example, the adoption in the United States of the 1939 Hatch Act – prohibiting civil servants to engage in partisan political activity – would have been unthinkable without the widespread but often unrecognized presupposition of the politics-administration dichotomy. Therefore a better understanding of the idea and its conceptual origins can improve our understanding of practice as well. Third and most important, conceptual origins are normally less contingent on particular historical circumstances (they are more timeless, if I may say so) than practical origins and hence more relevant for our situation. That is why an exploration of the conceptual 'prehistory' of the politics-administration dichotomy, apart from its historiographic value, may also yield important theoretical benefits. This works in two ways. First, recognizing earlier ideas that have been incorporated in the dichotomy may enable us to get a better understanding of more recent conceptualizations. Second, learning about earlier ideas that have *not* been integrated in the dichotomy may enable us to envisage other understandings of the dichotomy than those we happen to have. This will particularly benefit us in Chapter Six, when I reach back to ideas discussed in this chapter in order to reconstruct a largely forgotten but, in my view, still viable understanding of the dichotomy.

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[2] A good introduction to the relation between administrative thought and wider modern history up till the twentieth century is offered by Bülck (1965).

As with many complex ideas, the deepest conceptual roots of the dichotomy are difficult to trace. Although instances in which the terms 'politics' and 'administration' are explicitly opposed seem to be rare before the nineteenth century, many conceptual elements of the dichotomy are arguably much older than that. In tracing them, we have to be aware, however, of what Quentin Skinner in his critique on the traditional study of the history of ideas has called the fallacy of "reification" of ideas and doctrines. He issues a general warning against the habit of many historians and political philosophers to treat an idea under investigation as "immanent in history" and as "a growing organism" with an almost independent existence of its own. Specifically, he condemns the search for "anticipations of later doctrines" and "the endless debate – almost wholly semantic, though posing as empirical – about whether a given idea may be said to have 'really emerged' at a given time, and whether it is 'really there' in the work of some given writer" (1969: 10-12). Although Skinner's criticism is perhaps not wholly justified or definitive, he surely points to a genuine danger, namely of ascribing to earlier authors the intention to formulate the mature idea of which one tries to describe the history, even when they could not yet conceive of that idea. This in turn could reveal and reinforce an unwarranted historicism according to which earlier developments have necessarily tended towards a certain outcome – a Whig interpretation of the history of ideas, so to speak. In our case, such an approach would present Wilson's dichotomy as the necessary outcome of earlier unsuccessful but deliberate attempts to formulate 'his' dichotomy. To avoid this evidently misleading suggestion and the other perils Skinner points at, I look in this chapter not for anticipations of the dichotomy but rather for its "foundations," to use a word Vile adopts in the equivalent chapter of his book (1998: 23). By this I mean the preceding ideas that have made the conception and subsequent formulations of the dichotomy both desirable and possible. This more modest approach does not require me to seek an unbroken genealogical line back into the past, but allows me to highlight discontinuities as well as continuities in the prehistory of the dichotomy.

The next section (2.2) asserts the absence, or at least the unarticulated state, of the dichotomy in the tradition of political philosophy until the nineteenth century, but also its relation to one of the central questions within that tradition. In section 2.3, I show how the separation-of-powers doctrine in particular provided important ingredients for later formulations of the dichotomy. Section 2.4 argues that the rise of public administration within the state evoked two responses: the first (here associated with Montesquieu) gives public administration a legitimate but subordinate place within the constitutional order, while the second (here associated with Hegel) gives administration a special status besides and sometimes even elevated above that order. Section 2.5 then shows how French

writers about the place of administration in modern government (notably Tocqueville and Vivien) took up the first line of thinking, while section 2.6 examines how representatives of the German *Verwaltungslehre* (notably Von Stein and Bluntschli) developed the second line of thinking. While the former approach has left only few traces in later thought, the latter would become very influential in American Public Administration. By way of conclusion, section 2.7 recapitulates the characteristics of the 'nascent' dichotomy as it was understood before its famous articulation in Wilson's 1887 essay.

2.2   TRADITIONAL POLITICAL THOUGHT

The tradition of classical (i.e., ancient and medieval) and early modern political philosophy paid remarkably little attention to the 'administrative' side of government. Something we would now call 'public administration' surely existed in pre-modern and early modern government, but the execution of laws, the day-to-day management of public affairs, and the functioning of lower organs and officials are hardly discussed in the long tradition from Plato to, say, Kant. Instead, constitutional forms, the proper behavior of princes, and other such grand themes were the main subjects of reflection. Classical political philosophy in particular was concerned with the quest for the best possible regime and the importance of virtue in the statesman. Surely, some early modern political philosophers did pay attention to what we would now call public administration (Althusius, for example, discussed 'secular administration' extensively in his *Politica*; 1965 [1614]: 170-184), but generally speaking the subject was not considered as very important. Attention for public administration in the long history of political thought has thus come relatively late and remained rather limited. As Wilson pithily observed, administration "was put aside as 'practical detail' which clerks could arrange after the doctors had agreed upon principles" (1887: 199).

Given this inattention to public administration it must come as no surprise that not many traces of anything like a dichotomy between politics and administration can be found in the tradition of political philosophy either. As Mosher has observed:

> "The concept that policy should be determined by politically responsible officials, institutionally separated from the execution of policy – i.e. administration – and the arguments attendant upon it are relatively recent in political and intellectual history. One finds little reference to them in the writings of many of the great political thinkers, and this perhaps reflects the general lack of concern they felt about administration" (1982: 6).

But perhaps one could interpret this aspect of traditional political philosophy in the opposite sense and say that the neglect of public administration evidences the implicit affirmation of some sort of politics-administration dichotomy rather than its negation. In this view, public administration was not deemed worth much attention precisely because it was regarded as essentially distinct and separate from politics. This is a tempting interpretation, but the tacit assumption of a principle is difficult to prove. As this study is more concerned with the dichotomy itself than with the question of who exactly may or may not have endorsed it, I leave this speculation aside and simply conclude that explicit formulations of anything like the politics-administration dichotomy are hardly more than about two centuries old.[3]

Waldo has made an interesting attempt to explain the neglect of public administration in political philosophy and at the same time to trace the deepest conceptual origins of the politics-administration dichotomy. He points out that while our concept of politics has its roots in ancient Greece, especially in the Athenian *polis* and some later republican city-states, our concept of administration is rooted in "the ancient empires of the Middle East and the Mediterranean basin," most notably the Roman Empire (1987: 96-98; 1990: 77). This is even apparent from etymology, with 'politics' stemming from Greek and 'administration' from Latin (1990: 79). From these two divergent origins Waldo then infers two broad and persistent traditions in Western cultural history, namely the "civic culture tradition" going back to the ancient Greeks and the "imperial tradition" especially associated with the Romans (1987: 98; 1990: 77) – with 'imperial' used in a neutral, descriptive way, without any negative connotation (1987: 108 n.4; 1990: 78 n.). Political philosophy, according to Waldo, has been systematically biased towards the former and against the latter tradition. Hence it has neglected the administrative side of government and suffered from a certain "rootlessness" and detachment from the practice of government (1980: 70-71; 1987: 101; 1990: 79; Brown and Stillman 1986: 162-163 and Waldo's afterword, pp. 166-167).

This divergence of the two traditions, Waldo continues his argument, explains not only the striking absence of references to public administration, bureaucracy, civil service, and the like in political philosophical textbook and handbook indexes (1990: 79), but also the growing tensions, in the twentieth century,

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[3] As an early conceptualization of the politics-administration dichotomy, Nieuwenburg en Rutgers mention an interesting distinction of the sixteenth-century Dutch humanist Justus Lipsius between two types of advisors to the prince: on the one hand the *administrari*, preferably nobles, who were responsible for administrative, executive and legal issues and who often acted as regional governors and military commanders in the province, and on the other hand the *consiliarii*, who were not necessarily of noble descent and acted as ministerial advisors at the royal court (2001: 196; cf. Wansink 1981: 118).

between the academic fields of Political Science and Public Administration (1984: li, liv; 1987: 101; 1990: 79-82). Furthermore, it explains the emergence of the politics-administration dichotomy in modern states. From the Middle Ages up till the early modern development of the Western state, the imperial tradition was preserved in particular by the Roman Catholic Church (1987: 97). The newly emerging European states were primarily based on this tradition, but they were also affected in different degrees by the civic culture tradition (1987: 98). The mixed constitution of Britain in particular is a clear example of the blending of the two traditions: "It was at once royal and popular, authoritative and consensual, centralized and decentralized, and effective but restrained in its exercise of authority" (1987: 99). The American Founding Fathers subsequently intended to establish an 'extended republic' squarely in the civic culture tradition, but gradually, as their republic grew into a mass democracy in the early nineteenth century, the increasingly powerful polity also acquired imperial characteristics: the growing population living on a vast territory was governed by an increasingly large and complex government apparatus (1987: 99-100, 104-105; 1990: 78). No matter what the exact blending in particular states may have been, all modern states are characterized by a profound "disjunction" between the imperial and civic traditions. This tension is reflected in the tension between politics and administration. Put at its simplest, "our politics are Greek, but our administration is Roman" (1987: 96-98; 1990: 77-78). Whatever the nuances that must be added to this bold thesis, it points to the deep roots of the politics-administration dichotomy in Western cultural history.

Waldo's genealogy is sweeping and fascinating, but also impressionistic and unsatisfactory: it brushes aside too many nuances and complications. For instance, if the politics-administration dichotomy is based on the age-old disjunction between the Greek and Roman traditions, why then was it articulated only in the course of the nineteenth century? Waldo himself was well aware of the sketchy character of his genealogy, but he retorted that if the civic culture/imperial distinction could not be understood in a strictly historical way, it was at least of metaphorical, symbolic, and heuristic value: "One can speak meaningfully of civic-culture and imperial styles of government even if no important or direct historical cause is discernible" (1987: 101-102; 1990: 78). But even with this concession, it remains very difficult to establish clear conceptual connections between the disjunction of the Greek and Roman traditions in the long history of Western civilization on the one hand and the much more specific, typically nineteenth and twentieth century distinction between politics and administration on the other. We have to look for more specific origins of the politics-administration dichotomy.

There is, however, a deeper problem with Waldo's historical-disjunction

argument. It obscures the fact that actually much work in political philosophy has been devoted to attempts to reconcile the "civic" and "imperial" aspects of government. From Plato onwards, political thinkers have struggled with the problem that government should be powerful but also limited, unified as well as divided, skillful and competent and at the same time accountable to the citizenry or its representatives. Sufficient powers must be available to take action, but at the same time sufficient controls must be established to prevent and correct abuses. We can call this challenge the problem of constitutionalism. It has been aptly captured by Madison in *Federalist* 51: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself" (Hamilton, Madison, and Jay 2003 [1788]: 319). In the course of history, many different solutions have been proposed to the problem, and one of the main theses of this study is that the politics-administration dichotomy can be regarded as one of them. In the words of Vile, the dichotomy is a "reformulation of that problem of division and unity which has perplexed Western thinkers whenever the difficulties of a controlled exercise of power have been contemplated" (1998: 294). Thus understood, the dichotomy is a relatively recent and specific addition to a much older and broader tradition of thinking. It is a specifically modern or high-modern idea that cannot be found in pre-modern and early modern political thought (nor, as we will see later, in postmodern political thought), but at the same time it is rooted in much earlier thought. Its prehistory thus shows continuities as well as discontinuities.

2.3   THE SEPARATION-OF-POWERS DOCTRINE

To substantiate the claim of the previous paragraph it is necessary to determine more precisely where exactly the politics-administration dichotomy ties into the tradition of constitutional thinking. For that purpose I rely again on Vile, who has cast the problem of constitutionalism as the challenge to steer a course between two extremes: "Certainly most Western theorists have agreed, no matter how sharply they have disagreed on other subjects, that all decisions should not be made by a single man whose word is law, and that all the tasks of government should not be performed by a representative assembly" (1998: 371). The former would lead to tyranny and the latter to anarchy. To avoid these opposite perils, Vile continues, "there must in some sense be a functional division at the root of government organization" and that is "why, throughout Western history, from Marsilius to the present day, there has been the continual tendency for writers to insist that there are only two functions of government" (1998: 372).

Most elementary, these two basic functions can be contrasted as willing and acting (Overeem and Rutgers 2003: 167-172). This distinction stems from an anthropomorphic understanding of political community: just as the human being is supposed to have two basic functions of deliberation and action, so has the 'body politic'. This anthropomorphism was central, of course, to Plato's *Republic* already and has since recurred in ancient, medieval, and early modern political thought (cf. Voegelin 1952: 61-63). It is even remarkably persistent in modern times: it has been preserved in the separation-of-powers doctrine and it figured prominently in the organic state theories of German opponents of that doctrine, as we will see shortly.

More specifically than willing/acting, the distinction Vile refers to is one between law making and law enforcing. He argues that the very notion of government functions stems from the classical principle of the rule of law: "There is an essential connection between the notion of government according to law and the concept of the functions of government. (…) Government according to law presupposes at least two distinct operations, the making of law, and putting it into effect" (1998: 23-24). In order to prevent arbitrariness, however, the law must not only be supreme, but also general. Thus, the distinction between willing and acting fuses with the distinction between general and particular and together they become a distinction between making general rules (law making) and applying them to particular cases (law enforcing). This amalgamated distinction lies at the root of Locke's and particularly Montesquieu's versions of the separation-of-powers doctrine (Vile 1998: ch. 2 and 3). In *De l'Esprit des Lois*, in the famous sixth chapter of book XI, Montesquieu asserts there are two original powers of government, namely that of making laws and that of executing them. As the latter of these can in turn be subdivided into "executive power over the things depending on the right of nations" and "executive power over the things depending on civil right" (1989 [1748]: 156), we arrive at the *trias politica*.

This broad distinction between making general laws and applying them to particular cases can be encountered frequently in the history of political thought. In *Du Contrat Social* (1973 [1762]), to name one example, Rousseau draws a distinction between 'the Sovereign,' the collective body of citizens which legislates according to the *volonté générale* and 'the government' (also the "executive power" or "prince") which executes the adopted laws. He explains that this distinction is based on the more fundamental distinction, characteristic of human beings, between "the will which determines the act" and "the power which executes it" (1973 [1762]: 229; cf. Vile 1998: 196). Of course we cannot equate Rousseau's distinction between sovereign and government directly with the distinction between politics and administration. In fact, his undivided sovereign seems to be a rather a-political body, while his government seems to be

a much more political body, at least potentially. Yet Rousseau clearly employs a distinction that would later also become an important foundation of the politics-administration dichotomy. Other stark examples of the distinction between law making and law enforcing understood as a combination of willing/acting and general/particular can be found in the work of such otherwise very different thinkers as Hegel, who regards the legislative as concerned with "generality" and the executive as involved in "subsuming the particular under the universal" (1967 [1821]: §287),[4] and Thomas Paine, who rejects the tripartite separation of powers and argues that "if we permit our judgement to act unencumbered by the habit of multiplied terms, we can perceive no more than two divisions of power, of which civil government is composed, namely, that of legislating or enacting laws, and that of executing or administering law" (1969 [1791-2]: 220-221; cf. Landau 1972: 194 n.28).

Thus, in the writings of various seminal authors throughout the history of Western political thought, we see a tendency to postulate law making and law executing (understood as a combination of willing/acting and general/particular) as the two main functions of government. It is this distinction which lies at the root of the separation-of-powers doctrine as well as the politics-administration dichotomy (cf. Nieuwenburg and Rutgers 2001: 202; O'Toole 1987: 18). The two are closely related. Historically, the separation-of-powers doctrine is of course the forerunner and foundation of the politics-administration dichotomy: "The separation of politics and administration found a long-lasting anchorage in the doctrine about the separation of powers" (Rugge 2003: 179). Or, in the words of Van Riper: "Underneath much of the dichotomy controversy lies the bedrock prime cause of it all, our classic separation (balance, if you prefer) of powers constitutional doctrine" (1984: 214). Conversely, however, we can also say with Vile that the dichotomy is a "return to an older theory of government functions" – older, that is, than the separation-of-powers doctrine (1998: 307). The dichotomy is an outgrowth of the separation-of-powers doctrine, but also a deviation from it; the former presupposes the latter, but also goes beyond and in certain ways against it. Both when they are congruent and when they diverge, however, we can safely say the politics-administration dichotomy could not have been conceived without the separation-of-powers doctrine.[5]

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[4] According to scholarly custom, references to Hegel's *Philosophy of Right* are to paragraphs rather than pages.

[5] The development of the dichotomy from the separation-of-powers doctrine in the nineteenth century is comparable to the development, in turn, of that doctrine from the ancient and medieval doctrine of mixed or balanced government in the seventeenth century (Vile 1998: ch. 10 and 2, respectively). In both cases the older and the newer doctrine are closely connected, but at the same time at odds with each other. Yet the same constitutionalist lineage, no matter how twisted and transformed in the course of history, runs through each of them.

In connection to the separation-of-powers doctrine, it is also relevant to see whether and how the dichotomy suits the thought of the Founding Fathers of the United States. Some have indeed argued that the thought of the Founders, and in particular that of the authors of *The Federalist*, precludes the dichotomy (Rabkin 1998; Richardson 1997: ch. 3). Mainly two arguments have been brought forward to support this claim. The first is that the Federalists defined (public) administration in such a broad way, and ascribed such important responsibilities to it, that they necessarily cannot have regarded it as apolitical. The term 'administration' occurs frequently in *The Federalist Papers*, indeed even more often than 'Congress,' 'President,' or 'Supreme Court' (Rohr 1986: 1), but the most important passage in this discussion is *Federalist* 72, where Hamilton gives a famous definition of administration:

> "The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual and perhaps in its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department" (2003 [1788]: 434).[6]

From the sentences that follow this passage, it becomes clear that even in the latter meaning, public administration covers a vast area, including such important 'executive details' as diplomacy, defense, and budgeting. Because of this remarkably broad understanding of administration, it has been argued that the Federalists did not distinguish between administration on the one hand and executive power and politics on the other (Rabkin 1998: 164; Richardson 1997: 40).

The second reason why it is argued that the Federalists did not accept or could not have accepted the dichotomy appeals to their notion of popular government. In Rabkin's words: "Administration 'in its largest sense' must be political because it rests, in the end, on consent" (1998: 165). And in those of Richardson: "There are no grounds for a politics/administration dichotomy in a Federalist system in which 'all parts of the government became rulers and representatives of the people at the same time'" (1997: 40). Thus, the argument goes, for the Federalists administration was indistinguishable from politics because it implied large responsibilities and because it had to be responsive to the people. For these two reasons the politics-administration dichotomy is thought to be incompatible with the thought of the Federalists.

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[6] For Hamilton's ideas on public administration, see Kingsley 1945 and Riggs 1989. For instructive comparisons of Hamilton and Wilson, see Marion 1980 and Pestritto 2003: 566-567.

I believe this conclusion does not follow. For one thing, it is not at all clear that the dichotomy implies the limited, instrumentalist, and undemocratic understanding of administration that Rabkin, Richardson, and others associate with it. To clarify this, one should first examine the dichotomy in its classical conceptualizations (as I do in Chapter Three). More pertinent now is another point, namely that the Federalists did clearly regard administration as a subordinate activity. In the passage that immediately follows the quoted definition of administration in *Federalist* 72, Hamilton adds: "The persons, therefore, to whose immediate management these different matters are committed ought to be considered as the assistants or deputies of the Chief Magistrate, and on this account they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence" (Hamilton, Madison, and Jay 2003 [1788]: 434). This shows that, however grand their understanding of administration, the Federalists clearly wanted a hierarchical subordination of administrative officials to the President as the chief executive. In the second argument, the assumption seems to be that the Federalists endorsed an absolute conception of (popular) sovereignty as indivisible that did not allow for a dichotomy in government as such. If that was really the case, however, they could not have proposed the separation of powers either. Yet they insist on the separation of legislative, executive, and judiciary, even though these all have to be responsive to the people as well. The reasons for thinking the Federalists would have opposed the politics-administration dichotomy are therefore not very persuasive. This is not to say that the Federalists articulated or even conceptualized anything close to the dichotomy – they did not – but only that the idea seems not necessarily incompatible with their thought. Of course, the dichotomy can be framed in ways which make it so, for instance when administration is restricted to a purely instrumentalist function. This is, however, not the only possible way to understand the dichotomy. Later in this study I want to develop a constitutionalist understanding of the dichotomy that ties in quite well with their thought.

In this section I have argued that the separation-of-powers doctrine has provided important conceptual origins of the politics-administration dichotomy, such as the notion of government functions, and the combined notion of separation and checks and balances. As Rutgers puts it: "The opposition of politics and administration is the result of the application and adaptation of the idea of a separation of powers" (2001a: 4). This does not mean that the dichotomy was already somehow implied or presupposed by the separation-of-powers doctrine. The separation of powers in itself implies neither the concept of politics nor that of public administration as distinguishable parts or functions of government. The dichotomy became possible only in the nineteenth century when modern

administration and politics developed, as we will see in the next section. The question whether the politics-administration dichotomy can be theoretically reconciled to the separation-of-powers doctrine must be postponed until Chapter Six.

2.4   Montesquieu or Hegel

In the eighteenth and especially the nineteenth century, with the break-through of modern political philosophy, more systematic and explicit treatments of public administration emerged. After the Physiocrats in France, the Cameralists in Germany, and the Utilitarians in Britain had examined administration, mostly from economic points of view, Public Administration eventually became an independent field of study. The growing awareness of the importance of public administration in government that characterized this period had already been poetically expressed by Alexander Pope: "For forms of government let fools contest / whate'er is best administer'd is best" (1963 [1733-4]: 534). Or, as the German historian Niebuhr has famously put it, in modern times "liberty depends incomparably more upon administration than upon constitutions" (quoted by Levitan 1943: 357).[7] In other words, if the traditional relationship between politics and administration can be compared to a Victorian marriage (Thomas 1978: 43-44), the past 150 years have witnessed a steady and general emancipation of the latter.

Evaluations of this rise of public administration within the state differed sharply. Some, such as Edmund Burke, emphatically criticized the ascent of administration as the rising spirit of calculators and rationalists (cf. Haque 2004). Others were more confident about the role of rational public administration. Bentham and other utilitarians, for instance, saw great opportunities in the rationalization of government through administration (cf. Hume 2004). Saint-Simon even expressed as his conviction that "an enlightened society only [had] to be administered," not governed[8] and it was from him that Marx and Engels derived their hopes that one day 'the government of man' would be replaced by 'the administration of things'.[9]

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[7] Wilson explicitly rejected these statements (1887: 211), but in fact his essay strongly affirms their substance.

[8] Original: "Une société éclairée n'a besoin que d'être administrée" (quoted in Bülck 1965: 59).

[9] "All Socialists are agreed that the political state, and with it political authority, will disappear as a result of the coming revolution, that is, that public functionaries will lose their political character and be transformed into the simple administrative functions of watching over the true interests of society" (Engels 1978 [1874]: 732).

To be sure, these authors did not always offer a clear account of the proper position of public administration within the state. Among those who did think about that issue, there were roughly two divergent lines of thinking. In the first approach, it was tried to keep public administration subordinate to the traditional, constitutionally established powers. In this view, constitutional government, including the separation of powers, logically if not historically precedes the rise and development of administration. Administration is not illegitimate, but it has not the same constitutional status as the traditional branches of government. This approach can be associated with Montesquieu, although, in congruence with the tradition of political philosophy, he himself wrote very little about public administration. Only in the very short twenty-fourth chapter of Book XXVI of *De l'Esprit des Lois* he argued "[t]hat the regulations of a police are of another order than the other civil laws":

> "Matters of police are things of every instant, which usually amount to but little; scarcely any formalities are needed. The actions of the police are quick and the police is exerted over things that recur every day; therefore, major punishments are not proper to it. It is perpetually busy with details; therefore, great examples do not fit it. It has regulations rather than laws" (1989 [1748]: 517).

To understand this passage, it must be noted that 'police' in Montesquieu's days had a broader meaning than it has today (Heidenheimer 1986). In some editions it is therefore translated as 'administration'. This leads Martin to regard this passage as an early "hint" towards the later politics-administration dichotomy (1987: 298). However that may be, those who have followed in Montesquieu's footsteps have attempted to accommodate the ideal of constitutional government and the separation of powers with the rise of public administration. They have been anxious to give public administration a legitimate place within the state, but also to keep it subordinate to the constitutionally recognized powers.

The alternative response to the rise of public administration in the state was to give it a separate, special place besides the established constitutional powers, or even an elevated place above them, outside the separation-of-powers framework. In effect, this approach results in a distinction between administration and constitution. Bureaucratization in this view precedes constitutionalism and the separation of powers, as it was in fact the case in much of Germany in the eighteenth and nineteenth century, particularly in Prussia (Raphael 2000). If the first response can be called French approach and associated with Montesquieu, this one can be called the German approach and related to the thought of Hegel, particularly to his *Grundlinien der Philosophie des Rechts* (1967

[1821]). In that work, Hegel opposes what he calls "mechanistic" and "negative" understandings of the state and develops a much more unitary, "organic" idea of the state. Although he himself did not reject the separation-of-powers doctrine as such, he opposed understandings of that doctrine based on the idea of checks and balances (§272).[10] Those who are in "the service of the state," i.e., the civil servants, must "forgo the selfish and capricious satisfaction of their subjective ends" (§294), be free from particularity and oriented to the general interest, and form a "universal class" (§303). Public administration is separated from and in a sense even elevated above the other constitutional powers, because at the summit the civil service has a special and direct connection to the Sovereign Crown, unmediated by political representatives (§289). Hegel was not unconcerned about the danger of administrative dominance, but he was confident that it could be countered without much difficulty:

> "The security of the state and its subjects against the misuse of power by ministers and officials lies directly in their hierarchical organization and their answerability; but it lies too in the authority given to societies and Corporations, because in itself this is a barrier against the intrusion of subjective caprice into the power entrusted to the civil servant, and it completes from below state control which does not reach down as far as the conduct of individuals" (1967 [1821]: §295; cf. §297)

Montesquieu and Hegel, then, represent two contrasting responses to the rise of administration within the state. They have been rather starkly opposed here and obviously few pure representatives of either position can be found. Still the two approaches are clearly distinguishable in the literature and there are substantial differences between them. One of them regards their conception of liberty. This difference cannot be captured in terms of Berlin's famous distinction between negative and positive liberty: whereas Hegel's notion of liberty was not wholly positive, Montesquieu and the Federalists (and Tocqueville, who also belonged their tradition, see next section) did not endorse a purely negative conception of liberty. One can say, however, that in the first, French approach liberty is mainly understood as the protection of rights and in the second, German approach as the development of public welfare. The former implies what Stephen Holmes has called 'negative constitutionalism,' emphasizing constitutional checks and balances and favoring limitations so as to "disable" government power, while the latter implies 'positive constitutionalism,' favoring constitutional arrangements to "enable" government power (1995: 7-8, 101-102). These two

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[10] For introductions to Hegel's understanding of bureaucracy, see Jackson 1986; Shaw 1992; Tijsterman and Overeem 2008.

diverging approaches have provided the most important conceptual elements for formulations of the politics-administration dichotomy in the late nineteenth and early twentieth century.

The question may be raised whether the French and German approaches are exhaustive, whether there is not another, such as a distinct British approach. To answer this question, a careful distinction must be made between practical and conceptual origins of the dichotomy. Practically, Britain has obviously been very important: it is in fact the cradle of civil service neutrality and anonymity and similar norms that are closely related to the dichotomy. Theoretically or conceptually, however, the British contribution is much less clear. One interesting candidate for contributing to the development of the dichotomy is John Stuart Mill, who as a pupil of Bentham and an admirer of Tocqueville adopted a halfway position with regard to public administration as well. In his *Considerations on Representative Government* (1861) he poses a difference between the functions of the representative assembly and those of the civil service: "There is a radical distinction between controlling the business of government and actually doing it" (1972 [1861]: 229-230; cf. Schaffer 1973: 18). He even literally says that Parliament does the "talking" and administration the "doing" (1972 [1861]: 240). To fulfil their purpose properly, administrators need special training and professionalism and they shall be admitted to the civil service only by means of competitive examinations – an important element introduced by the well-known Northcote-Trevelyan report in 1854.[11] Thus Mill did certainly draw a line between politics and administration, but his influence on later thinking about the politics-administration dichotomy has remained very limited. Classic authors like Wilson and Goodnow did not rely on him. More influential for them were British conservative thinkers like Burke and Bagehot, although not directly with regard to the politics-administration dichotomy (Pestritto 2005: 8-13, 248 n. 16). Overall, British thought on the relation between politics and administration appears to have had little or no influence. The same is true for the twentieth century. Thomas (1978) has documented what she calls "the British philosophy of administration' in the period between 1900 and 1939 and compared this to its American counterpart. She pays special attention to the relationship between politics and administration, but her analysis offers little evidence for a distinct British theoretical contribution to the dichotomy. All in all, British practice seems to been more important than British thought and a British contribution to later debates about the dichotomy is not discernable.

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[11] For John Stuart Mill's views on public administration, see Schaffer 1973; Urbinati 2002: ch. 2; Warner 2001.

Although Montesquieu and Hegel can be named as geniuses behind the two main theoretical responses to the rise of public administration within the state, no explicit articulations of a dichotomy between politics and administration emerged in their own work. These came only in the writings of more secondary figures in the then emerging field of 'administrative science' – in the work of "French and German professors," as Wilson called them in his essay (1887: 202). These were not the learned 'doctors' discussing the great principles of government and constitutionalism, but more practically minded scholars with attention for the concrete workings of government. I turn first to the French *science administratif* and then to the German *Verwaltungslehre*.

2.5   The French approach

If anyone can be regarded heir to Montesquieu's line of thinking, it is Alexis de Tocqueville. He was, of course, not an administrative theorist in the narrow sense of the word. Yet he pays considerable attention to public administration in *De la Démocratie en Amérique* (published in two volumes in 1835 and 1840) and in *De l'Ancien Régime et la Révolution* (published in 1856).[12] In both works, Tocqueville discusses public administration against the background of his major theme, the rise of democracy and the decline of aristocracy. In this great drama of his age, be it in its second act in democratic America or in its first act in aristocratic, pre-revolutionary France, public administration played an important role.[13] For Tocqueville, the growth, centralization, and perfection of public administration are important corollaries of the process of democratization, indeed one of the driving forces behind it. He saw and feared the mild despotism of a large tutelary state, governed by "schoolmasters" (2000 [1835-40]: 644, 647). Democratic people, in his view, willingly subject themselves to a "compromise between administrative despotism and the sovereignty of the people," which gives them no more than the illusion of freedom (2000 [1835-40]: 664).

Distinctions between *administration* on the one hand and *gouvernement* and *politiques* on the other play a central role in Tocqueville's argument. The

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[12] Tocqueville himself hinted at the difference between administrative knowledge and political insight. Speaking about "those who ran things, the ministers, the judges, the intendants" in the *ancien régime*, he remarks that "several of them were very able man in their fields; they knew in depth all the details of the public administration of their time; but as for that great science of government, which teaches how to understand the general movements of society, to judge what is going on in the minds of the masses and to foresee what will come of it, they were as naïve as the people themselves" (1998 [1856]: 199). The latter was of course his own specialty.

[13] For Tocqueville's ideas about public administration in general, see Lawler 1998 and Maletz 2003.

distinction between *gouvernement* and *administration*, first, is particularly prevalent in his discussion of centralization. In his view, there are two basic types of centralization: "governmental centralization" is the concentration of powers to handle national affairs and "administrative centralization" is the concentration of powers to handle local affairs (2000 [1835-40]: 82).[14] While a considerable degree of the former may be necessary and desirable to maintain a modern state, it is especially the latter which poses a very strong threat to political liberty (2000 [1835-40]: 82-83, 87-88). The despotism of a centralized government, whether aristocratic as in the *ancien régime* or democratic as in America, is only kept bearable by a certain degree of administrative decentralization, allowing for "lax implementation" of the law at local levels (2000 [1835-40]: 90, 250-251; 1998 [1856]: 142, 171-179). In post-revolutionary Europe, however, where public administration is strongly centralized and highly perfected, the threat to freedom is particularly imminent (2000 [1835-40]: 654).

Uses of the literal distinction between *politiques* and *administration*, second, can be found all over Tocqueville's work. He says, for instance, that the county in America exists "only for a purely administrative interest" and has "no political existence" (2000 [1835-40]: 66; cf. 72). Likewise, during the *ancien régime* the French *parlement* (which was a local court rather than a national representative assembly) gradually abandoned its role in "government proper," in which it acted as an "administrator," to become "more involved in politics," adopting the role of a "spokesman" (1998 [1856]: 136-137). Thus, in these and other places, Tocqueville distinguishes between political and administrative institutions and practices. The most important instance in which he uses the distinction, however, can be found in *Democracy in America* when he argues that not one, but actually "two revolutions seem to be operating in our day," one political (i.e., democratization) and the other administrative (i.e., centralization), and that these two revolutions, though apparently contradictory, are in fact congruent (2000 [1835-40]: 659). Likewise, *De l'Ancien Regime* contains a chapter entitled 'How a Great Administrative Revolution Had Preceded the Political Revolution, and the Consequences That This Had' (III.7), in which Tocqueville argues that the perfection and centralization of public administration in eighteenth century France had preceded and facilitated the toppling of the old regime. The administrative

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[14] "Certain interests are common to all parts of the nation, such as the formation of general laws and the relations of the people with foreigners. Other interests are special to certain parts of the nation, such as, for example, the undertakings of a township. To concentrate the power to direct the first in the same place or in the same hand is to found what I shall call governmental centralization. To concentrate the power to direct the second in the same manner is to found what I shall name administrative centralization" (2000 [1835-40]: 82).

revolution had in fact been so effective already, that the 1789 political revolution had only little impact on the daily lives of common citizens in the provinces:

> "We changed the person of the ruler [*prince*], or the forms of the central power, but the daily course of affairs was neither interrupted nor troubled; everyone remained subject, in the little things which personally concerned him, to the rules and the practices with which he was familiar; he was subject to the secondary powers to which he had always had the habit of addressing himself, and usually he had to do with the same officials; for if at each revolution the administration was decapitated, its body stayed alive and intact; the same functions were exercised by the same officials; these officials transported their spirit and their practice across different political systems." (1998 [1856]: 240).

Notice how Tocqueville conceptualizes 'political' and 'administrative' in this passage: whereas the political revolution concerned "the person of the ruler" and "the forms of the central power," the administrative revolution concerned the "daily course of affairs," "the little things," "the rules and the practices," "the secondary powers," and "the officials" having direct contact with the citizens. In the anthropomorphic analogy, the first is regarded the head, the second the "body" of the state (cf. also 1998 [1856]: 245: "liberty's head on a servile body").

Tocqueville also notes that in the *ancien régime* two basic types of rule existed next to each other. In the first type, "power had been given to one man alone," for instance to a local official such as the *intendant*, who monocratically "acted without the help of any assembly". In the other type, "the executive power was not given to anyone in particular; the assembly not only governed and supervised the bureaucracy [*l'administration*] but carried out the administration itself or through temporary commissions that it chose" (1998 [1856]: 235).[15] Tocqueville is surprised to find that throughout the *ancien régime* these two systems were only used as alternatives and not combined:

> "It is strange enough that, in the heart of a society so enlightened, where the government [*l'administration publique*] had already, for so long, played such a large role, no one had ever thought of combining the two systems, and of distinguishing the executive power from the legislative power without entirely divorcing them [*distinguer, sans les disjoindre, le pouvoir qui doit executer de celui qui doit surveiller et prescrire*]. This idea, which seems so simple, never arrived; it was discovered only in this century. It is indeed the only great discovery in public administration [*en matière d'administration publique*] that we ourselves have made" (1998 [1856]: 235).

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[15] Note that these are exactly the two forms of rule that the Western tradition of constitutionalism, according to Vile (1998: 371), has perpetually sought to avoid.

Here we meet an important point. The translation suggests this passage refers simply to the separation-of-powers doctrine, but this cannot be meant, because that doctrine was invented well before the nineteenth century, as Tocqueville well knew. The French original speaks literally of "distinguishing, without separating, the power that ought to execute from the one that ought to supervise and prescribe". Without ascribing to Tocqueville the deliberate intention to offer a formulation the politics-administration dichotomy, one can say that this looks very much like one.

A last interesting aspect of Tocqueville in this regard is that he associated the distinction between politics and administration with that between national and sub-national government. Politics for him referred to "the central power," while administration, though often directly supervised from Paris, was performed at the local and provincial level. Hence he could say that during the old regime the French "transported" their "administrative habits into politics [*transportant dans la politique les habitudes administratives*]" when they applied "the system which the provincial estates and small municipalities had followed in the National Convention" (1998 [1856]: 235-236). This understanding of politics as national government and administration as local government has virtually disappeared from later conceptualizations of the dichotomy.[16]

However interesting his ideas on public administration, Tocqueville was obviously not an administrative theorist in the strict sense of the word and it was certainly not his first interest to provide a theoretical formulation of the relation between public administration and politics. This task was rather taken up by less eminent writers in the newly developing *science administratif*. Martin, one of the few Anglophone students of nineteenth century French thinking about public administration, credits the French with having developed the politics-administration dichotomy well before the advent of Public Administration as a self-conscious field of study in America. Moreover, he argues that the French, compared to the Americans, "made better use of it once they developed the concept" (1987: 298):

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[16] This notion has become so much dissociated from the twentieth century (American) understanding of the politics-administration dichotomy that it has led some authors even to oppose Tocqueville's views to Wilson's dichotomy, or rather a very narrow understanding of it: "[W]hat Tocqueville favored was a division of political authority between national and local governments, based on the distinction of political authority between national and local policy concerns, rather than the fragmentation of the execution of policy. This is not to say, of course, that Tocqueville would have favored the isolation of policy formation from policy execution towards which Wilson seems to point" (Schaeffer and Schaeffer 1979: 288).

"From the beginning, the French recognized that the dichotomy was artificial and desirable, but that administrators are actually making policy all the time. They feared this intermingling of politics and administration for the effective operation of both sides. Intervening legislators could too easily make administration ineffective; policy-making bureaucrats had a natural tendency to become arbitrary and power-hungry. Therefore, the French studied the dichotomy to determine where controls were needed" (1987: 298).

Particularly this emphasis on mutual control and checks and balances shows that the French conceptualization of the dichotomy was a continuation of Montesquieu's constitutionalist line of thinking. The French administrative theorists treated the dichotomy as a tool for the limitation rather than the empowerment of government.

Several nineteenth century French authors have been credited with formulating distinctions that come close to or are implied by the politics-administration dichotomy. Among these are Charles-Louis Bonnin, who with his *Principes d'Administration Publique* (1812) became one of the earliest representatives of the then developing *science administratif* (Chevallier 1999: 85), as well as later theorists of administrative law such as Théophile Ducrocq and Léon Duguit (Vile 1998: 304). Although it is true that these authors drew distinctions between administration on the one hand and the state and especially the government on the other that are evidently related to politics/administration (Martin 1987: 298; Nieuwenburg and Rutgers 2001: 192), yet their formulations do not amount to the dichotomy itself. This is different in the work of Vivien, who therefore deserves closer attention.

Auguste Vivien (1799-1854) counts as an influential representative of the *science administratif*.[17] In the first part of his *Études Administratives* (1859; first edition 1845), Vivien gives an extraordinarily clear account of the position of administration in the broader system of government. Right at the start of his analysis, he draws a sharp distinction between politics and administration: "The executive power itself can be divided in two branches: politics [*la politique*], that is to say the moral direction of the general interests of the nation, and administration [*l'administration*], which primarily consists of the accomplishment of the public

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[17] There is an extensive intellectual biography of Vivien (Pirotte 1972). Besides being a well-known publicist and lawyer in his days, Vivien was mainly active in political life, serving as a *préfet de police*, as a member and even vice-president of the *Conseil d'État*, and as a deputy of Saint Quentin for sixteen years. Two times he occupied a political position of power, first as a minister of finance (*garde des sceaux*) in 1840 and then as minister of public works in 1848, but all in all he remained "*un personnage politique de second plan*," as Pirotte puts it (1972: 10). Ideologically, Vivien was called a "*libéral autoritaire*" because he, like Tocqueville, sought for a middle road between administrative despotism and the sovereignty of the people and aimed for the difficult conciliation of order and liberty (preface by Drago in Pirotte 1972: ii; cf. p.11).

services" (1859: 3-4). This way of understanding the administration as part of the executive branch can be regarded as typically European; in American constitutional thought the executive is traditionally understood as the presidency only, and more strictly set apart from public administration (Rutgers 2000: 297-298).

Having set up this contrast, Vivien subsequently opposes 'the administration' to each of the traditional three branches of government. First of all, he straightforwardly establishes the subordination of the administration to the legislative:

> "The legislature disposes and, in matters that concern her, the administration applies: to the one the declaration of right, to the other the execution. (…) The administration is then the servant of the law [*serviteur de la loi*]; she is the living force which renders [the law] active and sensible, the organized instrument which gives it external power and which, in its name, gives movement to the public affairs" (1859: 6).

Notwithstanding this hierarchical relationship between the legislative and the administration, the latter is a highly important force in the state if only because of the large number of cases it handles (1859: 6). The law, unable to foresee and regulate everything, is necessarily framed in general terms and has therefore often to be complemented by secondary measures so as to prevent an unreliable execution. This gives the administration "an almost legislative character" (1859: 7). Nevertheless, a fundamental difference between legislation and administration remains. Vivien elaborates quite extensively on the differences between laws, that are general, and administrative regulations, that are much more particular (1859: 7-11).

After a discussion of the relation between the administration and the judiciary (which can be left aside here), Vivien finally describes in abstract terms the relationship between administration and the executive, or "the political power" (*le pouvoir politique*) as he calls it.[18] Drawing explicitly on the anthropomorphic metaphor, he provides a fascinating and full-blown formulation of the politics-administration dichotomy. It is illuminating to retain his use of gender in the translation:

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[18] Vivien's concept of politics is somewhat elusive. Although he refers to the executive branch only when he speaks of 'the political power,' he also says that "the political power divides itself more or less over the chief executive [*le chef du gouvernement*] and the legislative branch [*les assemblées*]" (1859: 4). So it seems that politics is distributed over the legislative and the executive, while also being a subcategory of the executive. Perhaps this ambiguity can be resolved by the distinction between politics as a function and politics as an institution. At any rate, it does not seriously harm Vivien's analysis of its relation to administration.

"Closely associated with the administration, [the political power] does definitely not confuse itself with her. Its function is entirely that of initiative, of appreciation, of direction, of advice. It is *he* that gives the administration her general spirit, her ideas, and, if one may speak so, her 'badge of honor'. To *her* is reserved the action, that is to say the execution of the laws and the material and practical exercise of the powers conferred to the government. The political power is the head, the administration is the arm" (1859: 30).[19]

Vivien completes his conceptualization of politics/administration with a distinction between general and particular measures. The relationship between politics and administration is different for these two categories:

"In all those general measures, the administration has to obey politics as a loyal and devoted servant; its resistance or its ill-will would be a source of disorder. But if this is the case for those [measures] that constitute the general direction, the two powers should be separate (not to oppose them, but to keep them in their respective conditions) when it concerns the execution of the laws, the detailed measures, and the direct contacts of the public power with the citizens" (1859: 31).

In other words: public administration has to be subordinated to politics in the case of general measures and it has to be separated from politics in the case of particular measures. Whether there is or is not a relation between them thus depends on the circumstances.

An active government official himself, Vivien realizes that, although theoretically and normatively the position of public administration may be clearly determined, in practice "the administration is always exposed to intrusions by the political power" and that this can easily lead to abuse, patronage, and corruption (1859: 32; cf. p. 15).[20] Therefore, the public administration is in an ambivalent position: "She can dominate the legislative power and the judicial power, but at the same time she is at the mercy of the political power," that is, of the executive. From the point of view of the separation of powers, he adds in a truly

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[19] Original: "Étroitement associé à l'administration, il ne se confond pourtant pas avec elle. Sa fonction est toute d'initiative, d'appréciation, de direction, de conseil; c'est lui qui donne à l'administration son ésprit general, sa pensée, et, si l'on peut ainsi parler, son drapeau; à celle-ci est reserve l'action, c'est-à-dire l'exécution des lois et l'exercise materiel et pratique des pouvoirs confiés au gouvernement. Le pouvoir politique est la tête, l'administration est le bras."

[20] Vivien fears that the system of ministerial responsibility is in itself insufficient to curb this danger, because parliaments tend to pay little serious attention to administrative matters, especially when the responsible ministers belong to the parliamentary majority: "The majorities do not want to descend into these obscure details, and for so little, to topple a minister or make him stagger" (1859: 34).

Montesquieuan spirit, this is a "dangerous situation" because it means that the executive can also dominate the other branches (1859: 37). Vivien's dichotomy between the (political) executive and the (apolitical) administration therefore has a constitutionalist character: it is meant as a limitation on government in order to prevent the abuse of power. To that end, public administration must be simultaneously separated from the other branches and checked by them:

> "On the one hand, political liberty is at stake. The separation of powers is the first condition of free governments (…) On the other hand, the more the administration has seen its domain extended, the more it is necessary to confine her closely and to put barriers that retain and prevent her from leaving, given the laws and the mores that have enlarged her sphere" (1859: 5).

Vivien's concern about this predicament shows that Martin's judgment that "Vivien was confident that the balance between politics and administration was secure" (1987: 298) is largely incorrect. There also is little reason for his opinion that, overall, "the French were optimistic about their ability to handle the pitfalls of the dichotomy" (1987: 298). In fact, the French administrative thinkers were well aware of the importance but also the difficulties of integrating public administration (and thus the dichotomy) into the separation-of-powers structure. In the line of Montesquieu and Tocqueville, they developed a version of the dichotomy which gives administration a legitimate though subordinate place vis-à-vis the traditional powers, but their version of the dichotomy has remained largely unnoticed. This is true, unfortunately, for French administrative thought in general. Even Vivien, who for the clarity and constitutionalist character of his account stands out as the most important Francophone writer on our subject, has had scarcely any influence on later debates about the dichotomy. Important as this tradition may be, it has remained rather isolated and exerted little influence on Western Public Administration in general and on debates about the politics-administration dichotomy in particular. We know that Wilson and Goodnow were acquainted with some French political and administrative literature (Pestritto 2005: 28n28, 239), but in general French ideas were largely "forgotten" and "apparently unknown to most later American authors" (Martin 1987: 301-302). German administrative thought, by contrast, has been much more influential (Fries 1973).

2.6   The German approach

The wave of interest in public administration known as *Verwaltungslehre* (study of administration) corresponded with several other currents prevalent in nineteenth century German thought. Preceded by the seventeenth and eighteenth century *Kameralistik* and *Polizeiwissenschaft*, it was embedded in the more encompassing German *Staatslehre* tradition, which can be traced back to Hegel and Fichte and still exists today (Vincent 2004: 28-37; Maier 1966). The shadow of Hegel's *Elements of the Philosophy of Right*, with its heralding of the Prussian bureaucracy, falls over much of German political and administrative thought in this period. A common characteristic of the traditional *Staatslehre*, traceable to Hegel as well and clearly visible in the *Verwaltungslehre* literature, is the organic conception of the state (Coker 1910; Kaufmann 1908; cf. Vile 1998: 306; Blasius and Pankoke 1977: 120-131; Von Stein 1865: 2-3; Van den Berg 1882; Vontobel 1956). The state was regarded as an organism, indeed often as the highest organism conceivable, possessing personality not very much unlike human persons, albeit of a qualitatively higher kind. The state was interpreted anthropomorphically and many bodily and mental functions of humans were ascribed to it. Organic state theory was a Romantic response to mechanistic views of the state, including the separation-of-powers doctrine, that were dominant in Western Europe, especially in France (Blasius 1970: 165; Blasius and Pankoke 1977: 126). The divergence between mechanical thought and organic thought was vividly presented as a contrast between Newton and Darwin.

The two German-speaking administrative theorists in this tradition who have exerted the strongest influence on later thinking about the dichotomy are undoubtedly Lorenz von Stein and Johann Caspar Bluntschli (the latter was in fact Swiss, but he worked much in German academia). Both authors have had a demonstrable and direct influence on the American founders of Public Administration, especially Wilson (Miewald 1984).[21]

Von Stein (sometimes simply called Stein) is best known for his writings on the role of public administration in the modern state (cf. Gerigk 1966; Rutgers 1994). Here I concentrate on the conceptual frameworks he developed in his *Verwaltungslehre* (1865) and in his *Handbuch der Verwaltungslehre* (1887). In these works Von Stein draws a contrast between the French and the German approaches to the state and, with a considerable dose of chauvinism, emphatically defends the latter (1865: 10). In other words, the "mechanistic-instrumental state theory," regarded by many Germans as typical of French thought, is the "polemical counterpoint to Stein's organic concept of the state" (Blasius and Pankoke 1977:

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[21] As representatives of the *Verwaltungslehre*, they had left the *Polizeiwissenschaften* behind them (Blasius 1970: 197-199; Blasius and Pankoke 1977: 132-139; Maier 1966: 290-291; Bluntschli 1876: 469).

126). In particular, he rejects Montesquieu's doctrine of the separation of powers (1865: 10). He concedes that the notion of 'power' (*Gewalt*) is useful, but for him the problem of the French approach is its inductiveness: it starts with the powers of the state and hence tries to arrive at its essence. In this approach, the exact number of powers, be it three, four, five, or more, remains indeterminate. According to Von Stein, one should start conversely with the organic character of the state and from there derive its different functions and powers (1865: 13). In the *Handbuch*, he asserts that "the study of public administration should start, according to our best conviction, not at the practical administration" (1887: 8).

In Von Stein's view, the organic state has three main elements. The first is the state's ego (*Ich*), which is the sovereign monarch, personifying the state's self-determination (1865: 4).[22] The other two elements are the will (*Wille*) of the state and its action (*That*) (1865: 4-5; 1887: 11-12, 14-16). Here we can further leave the ego out of consideration, but Von Stein's relatively well-known distinction between the other two elements deserves closer scrutiny. It is clear that Von Stein associates the former element, the will of the state, with "the legislative power" (*Gesetzgebende Gewalt*), although he sometimes also calls it the constitution (*Verfassung*; 1865: 5, 18), but how to describe the latter, the active element which looks after the realization of the state's will in practice and "gives the state its life" (1865: 5)? Confusingly, Von Stein uses different names for it in different works. In the *Verwaltungslehre*, he calls this element the "administration in its broadest sense" (1865: 6) and, not unlike Hamilton in *Federalist* 72, subdivides it into execution and administration (in a narrower sense) (1865: 6, 18). In the *Handbuch*, however, he calls this third element the executive power (*Vollziehende Gewalt*), thus arriving at the sovereign, the legislative, and the executive as the three main organs of the state (1887: 16-17). Apparently, he wanted to do away with the ambiguous meaning of *Verwaltung* that had troubled his earlier work.

Confusing as this change of labels may be, it is instructive to consider what Von Stein says in both works about the actual difference between the executive and the administration. In the *Verwaltungslehre*, he says the executive "is the power as such, from which the activity originates," whereas the administration "is the real activity, which contains the power" (1865: 9).[23] The two are intimately related, but their orientation is different: the executive relates the action of the state to its will, whereas the administration relates it to the concrete world. "Hence, in external practice [*äußerlich*] the two cannot be separated; there is no execution without administration, and no administration without execution; they

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[22] Von Stein defends constitutional monarchy on the grounds that the monarch, standing 'above the parties,' is the best guarantee for promoting the interests of the whole and especially the lower classes. Hence he speaks of a 'social monarchy' (*socialer Königsthum*).

[23] Original: "jene die Kraft an sich, aus welcher die Thätigkeit hervorgeht, diese die wirkliche Thätigkeit, welche die Kraft enthält."

are constantly related like two sides of the same coin, but nevertheless constantly different like those" (1865: 9).

In the *Handbuch*, Von Stein further explains the difference between execution and administration by means of the important and originally Hegelian distinction between act (*That*) and labor (*Arbeit*). The difference between these two is that an act "originates from a particular and clearly circumscribed purpose [*Zweck*], which is given but also exhausted by the relation between a particular want and a particular external fact", whereas in the case of labor "the realization of every purpose is for the laboring personality himself again only a means to a higher purpose" (1887: 30). Phrased differently, an act is only a one-way realization of a specific task or purpose by certain means, whereas labor implies also a feedback-relationship in which the laboring subject becomes object and vice versa. Applying this important distinction to the case of public administration, Von Stein sees a mutual relationship between state and society: the state does not unilaterally *act* on society, i.e., impose its purposes while using public administration merely as an instrument, but the administrative state, as an integrated organism, adjusts its *labor* to societal circumstances, accounting for the powers and possibilities that are already present in society. In this view, the public administration mediates between the general integration of ideas at the state level and the variety of particular interests at the societal level (Blasius and Pankoke 1977: 134, 139-142). Just as a person's 'plan of life' turns mere activity into labor, likewise state activity becomes state labor only when the highest purpose of the state is at the same time the realization of the highest personal purposes of all its members (1887: 30). Thus, to understand the meaning of public administration in Von Stein's work, and its difference from the executive, we need to emphasize the notion of labor, because for him "the idea of administration is the idea of the laboring state [*der arbeitende Staat*]" (1887: 25; Blasius and Pankoke 1977: 140).

Notwithstanding the differences between execution and administration, Von Stein strongly denies that both are merely the instrumental and mechanical application of the laws, as if they acted only as the "steward of the legislative" (1865: 36; cf. Blasius 1970: 161). There are many situations in which legislation is lacking, defective, or otherwise insufficient and in which, therefore, another will of the state is needed, formulated by the executive (1865: 13, 31, 44).[24]

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[24] According to Blasius, Von Stein had a deep distrust of legislation and legislatures. Law, in his view, was always faulty and incomplete; parliaments act on the basis of partial and partisan interests at the cost of the general interest. Hence he made a separation between government and popular representation and rejected the idea of the accountability of the government towards parliament. Government is only dependent on the sovereign monarch (Blasius 1970: 161-163). At the same time, Stein emphasized that the administration plays its role in the legislative process in providing knowledge about socials facts and about its own powers to the legislator, so that, "by its proposals, the administration has the initiative in legislation" (1887: 28). The contrasts between this view and those of the authors in the French tradition are striking.

Whereas the will of the legislative is expressed in laws (*Gesetze*), that of the executive is expressed in regulations (*Verordnungen*). The distinction between the two is very important for Von Stein, as it was for Vivien (1865: 51; 1887: 29; cf. Blasius and Pankoke 1977: 142; Maier 1966: 247-248). Of course, regulations are subordinate to laws and may never be in contradiction with them (1865: 53, 64), but when the distinction between them would disappear, this would lead to a "despotism" in which "the subjective will of the sovereign is unconditionally and unlimitedly the objective will of the state" and "everything commanded is law" (1865: 52).[25] The similarity with Vivien is clear, and we see that Von Stein had his constitutionalist concerns too, but this should not mislead us: Von Stein wanted to uphold the distinction between laws and regulations because he feared despotism from the side of the 'political,' law-making power over the 'administrative' rather than vice versa – a position typical of the German approach distinguished earlier and opposite to that of Vivien and others in the French approach.

In summary, we can say that Von Stein contrasts the concept of *Verwaltung* with two broad clusters of other concepts. The first cluster contains concepts from the legislative sphere such as *Verfassung* and *Wille*; the second contains concepts from the sphere of the executive such as *Vollziehung*, *That*, and *Regierung* (Nieuwenburg and Rutgers 2001: 190; Vile 1998: 304). The contrast of administration to the second cluster seems to be a specification of the contrast with the first. As opposed to both, public administration is conceptualized by means of concepts that give it its own distinct meaning: the laboring state, the orientation to and interaction with society, and regulations. The concept of politics, however, seems not very important in Von Stein's work. Instead, he speaks mostly of government (*Regierung*). Government is execution permeated by principles that are derived from the moral and juridical organism of the state: "The art of finding, at all time, the right relationship of the general principles to the given situations of a state, is called the art of governing [*Regierungskunst*] or politics [*Politik*]" (1865: 14). "Governing is simply nothing else but principled execution" (*idem*).

All this shows that that it is much too simple to equate Von Stein's opposition of willing and acting with that between politics and administration. He not only calls the willing side of the state by other names than 'politics,' but, more importantly, he does not simply equate public administration with the acting side

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[25] The only defining characteristic of law, according to Von Stein, is that it is promulgated by the legislature – not that it is oriented to the general will or accepted in an orderly or constitutional way, because these are also characteristics of a regulation (1865: 53). So the fundamental difference between law and regulation is the involvement of parliament (*Volksvertretung*) in the former. For citizens, however, there is no difference between the two with respect to their obedience (1865: 53).

of the state. His concept of *Verwaltung* is at the same time more narrow (the executive also acts) and more broad (public administration also has a will of its own) than the willing/acting distinction suggests. Von Stein's description of public administration as "the laboring state" seems to capture this paradoxical meaning best, as his concept of labor (*Arbeit*) both gives a specification of acting (*That*) and bears the implication of willing (*Wille*) at the same time.

Until a small revival in the second half of the twentieth century, Von Stein did not have much influence on the study of Public Administration in his own country. His influence on Weber, for instance, has been very limited (Blasius 1970: 197). It is therefore remarkable that his influence on American administrative thought has been quite strong. In particular, the politics-administration dichotomy can be claimed to be part of his legacy: "If Wilson or Frank Goodnow are to be called the 'fathers' of American public administration, Stein (1815-1890) deserves recognition as at least a grandfather" (Miewald 1984: 19). Nonetheless, it is difficult to pin down the exact way in which Von Stein's conceptual framework has contributed to the politics-administration dichotomy. One reason must be that Von Stein nowhere gave a clear formulation of the politics-administration dichotomy, as did Vivien or, as we will see now, Bluntschli.

Like Von Stein, Johann Caspar Bluntschli (1808-1881) was a representative of the 'historical school' in the *Staatslehre* tradition. He opposed what he regarded the excessively universalist and rationalist principles of French political thought and endorsed an organic conception of the state instead (Van den Berg 1882; Vontobel 1956).[26] In Bluntschli's work, which mainly deals with constitutional and international law, the subject of public administration covers only a small portion. Yet even this small contribution would leave a clear trace of his thought behind, as he was quite influential in American Political Science in the 1880s, especially at Johns Hopkins University, where Wilson worked (Miewald 1984: 18). His best known work, *Lehre vom modernen Staat* (1876), was soon translated in English (1885). This is an important book, because in his famous essay (1887: 210) Wilson derives his understanding of the politics-administration dichotomy directly from its third volume, titled *Politik als Wissenschaft*. Book XI of that volume deals with public administration. Bluntschli starts his analysis with the question after the meaning of administration: *Was heiszt Verwaltung?* In order to answer this basic question, he contrasts *Verwaltung* with four concepts: constitution (*Verfassung*), law (*Gesetz*), politics (*Politik*), and justice (*Justiz*)

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[26] Apart from this philosophical stance, Bluntschli was not very consistent. In his active political life in both Switzerland and Germany, he changed positions from freethinking liberalism to reactionary conservatism, even ultramontanism, and then back to liberalism again. Tellingly, he is often qualified as a 'liberal-conservative' (Van den Berg 1882: 63; Vontobel 1956).

(1876: 465-468). While making these contrasts, he also problematizes them. With regard to the first two oppositions, that between *Verfassung* and *Gesetz* on the one hand and *Verwaltung* on the other, Bluntschli refers to Von Stein and even Rousseau for their distinction between willing and acting (*Wille* and *That*).[27] Whether or not Bluntschli's reading of Von Stein and Rousseau is correct, he strongly objects to this distinction, arguing that it "leads to a wrong view on administration, as if she had no will of herself" (1876: 466). To him, the idea of administration as an unthinking executioner of the law is absurd.[28] He suggests, therefore, that "the opposition of law and administration must be understood differently, namely as *general will* and *particular will*, general ordering of the rule and particular measure in the individual case" (1876: 466-467). In this view, the general law determines the limits within which administration can move according to its own determination (*Selbstbestimmung*). One thing is clear: "She [public administration] is not the mere execution of the law" (1876: 467).

Subsequently, Bluntschli examines the distinction between administration (*Verwaltung*) and politics (*Politik*). Here is the literal translation of the passage which Wilson refers to in his essay:

> "Further, it is common to contrast administration with politics as well, so that she is excluded from the law as well as from politics. Politics is then related to the activity of the state and for the state in things great and universal; administration, by contrast, to the activity of the state in *individual* and *small* things. Politics, then, is particularly the task of *statesmen*, administration of the *technical* functionaries" (1876: 467).[29]

Remarkably, Bluntschli calls this contrast "common," although in fact it was not really very common in his time. His conceptualization of politics/administration as a distinction between "things great and universal" and "individual and small things" suggests a gradual transition rather than a sharp break between them.

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[27] Miewald argues that Bluntschli was criticizing Stein for making the distinction of will and deed a basis for a strict interpretation of politics and administration. Bluntschli had obviously misread Stein, for, as is repeated time and again, will and deed are inseparable parts of the whole" (1984: 22). Miewald seems to overlook that Bluntschli was not criticizing Von Stein's conceptualization of *Politik*/*Verwaltung* here, but of *Verfassung*/*Verwaltung* and *Gesetz*/*Verwaltung*, but I agree that Bluntschli seems to take Von Stein somewhat too strictly.

[28] Bluntschli adds two other objections to equating *Gesetz*/*Verwaltung* and *Wille*/*That*. The first is that, very often, laws are not expressions of will, but only recognitions of necessity. The second is that legislating can be regarded as acting itself (1876: 466). These points can here be left aside.

[29] Original: "Man pflegt ferner die Verwaltung auch der Politik entgegen zu setzen, so dasz jene sowohl von dem Gesetz als von der Politik ausgeschieden wird. Die Politik wird dann auf die Thätigkeit des Stats und für den Stat im Groszen und Ganzen, die Verwaltung dagegen auf die statliche Thätigkeit im *Einzelnen und Kleinen* bezogen. Die Politik ist dann voraus Aufgabe der *Statsmänner*, die Verwaltung Aufgabe der *technischen* Aemter."

He does not criticize this distinction as fiercely as the willing/acting distinction, but his further discussion shows that he was fully aware that it is not very strict. He calls the line between politics and administration "a fluid one" (*ein flieszender*). As Bluntschli explains:

> "Politics cannot be carried through without the assistance of the administration. Many administrative acts have – if they bear a meaning for the entire state and the entire nation – also a political character. The leading statesman will leave innumerable issues to the administration without paying them further attention. But there is no administrative act that is so unimportant, that (…) it cannot attract the attention of the statesmen" (1876: 468).

In other words, many administrative issues are political at the same time and every administrative issue can in principle become a political issue. Thus, the difference between the two cannot be found in the character of the issue at hand. Interestingly, this is an insight that we will later encounter in the thought of defenders as well as opponents of the dichotomy (Chapters Three and Four).

A last important aspect of Bluntschli's conceptualization of the politics-administration dichotomy (for so we can now frankly call it) is his view on the party political position of professional administrative functionaries (*Berufsbeamten*). He sees two opposite dangers. The first is that administrators belonging to other political parties than their ministers could attempt to obstruct them. The other is that a public administration entirely run "in the spirit of the leading parties" might easily lead to minority suppression and "party tyranny" (*Parteityrannei*) (1876: 493). Bluntschli thinks that administrative law and executive supervision are only partly effective to curb these dangers. In addition, he says, we should make a distinction between several types of functions and be aware that some administrative functions allow for greater party political allegiance than others.[30]

This awareness of the dangers of administrative politicization is not very common to the German tradition outlined earlier, but it shows, in any case, that Bluntschli had a down-to-earth and nuanced understanding of the politics-administration dichotomy that allows for variation and change. In other respects,

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[30] Bluntschli distinguishes between three classes of functions. First, there are those relatively few administrative functions that are performed on the basis of political trust (*politische Vertrauensämter*). These allow for strong party political allegiance. The great bulk of other functions, and particularly those in the judiciary, the lower ranks of the police, and the military, second, should be performed neutrally. A third class are technical and cultural functions that are unrelated to the power of government (professors, doctors, engineers, etcetera). These can be performed according to the personal political freedom that is allowed to private citizens, although with proper recognition of the morality and potentially political influence that their position entails (Bluntschli 1876: 494-496).

however, Bluntschli perfectly suits the German or Hegelian approach. He endorses an organic and purposive conception of the state, abandons the separation of powers, and is keen not to subordinate public administration to the other powers but rather give it a separate, special place within the state. It is true that Von Stein was even clearer in these respects than Bluntschli. For both men, though, the dichotomy primarily served to keep administration undisturbed from political interference.

2.7   AT CROSSROADS

This chapter has tried to trace the main conceptual origins of the politics-administration dichotomy 'before Woodrow Wilson'. I have argued that the dichotomy is deeply rooted in the tradition of constitutional thought, but formulated only after the establishment of the separation-of-powers doctrine in the eighteenth and the rise of public administration in the nineteenth century. With the expansion of public administration, many thinkers came to realize that more than ever the preservation and realization of liberty and other constitutional values would depend on the role and position of public administration within the state. The politics-administration dichotomy was formulated as a response to this awareness. It is therefore a typically modern, nineteenth-century idea – which is not to say that politics and administration themselves are modern phenomena, but that only in the modern state the classical constitutional predicament of simultaneously empowering and limiting government was met by pitting politics and administration against one another.

   The dichotomy was promoted in two divergent ways: either to keep administration subordinate to the constitutionally recognized powers of the state (the French approach) or to set it apart from those and give it a separate role and legitimacy (the German approach). In the former approach, the dichotomy is combined with the separation-of-powers doctrine; in the latter it is rather regarded as an alternative. The conceptions of constitutionalism and liberty involved in these two approaches are also different. Thinkers in the French approach endorse the dichotomy in the pursuit of limited government ('negative constitutionalism') and the protection of political liberty against administrative dominance. Thinkers in the German approach, by contrast, favored the dichotomy so as to increase government power ('positive constitutionalism') and to provide liberty through administration.

   In both approaches we see that while the concept of (public) administration acquired an established and relatively clear meaning, the concept of politics long

remained underdeveloped. In French and German thought, administration was mostly not contrasted with *politiques* and *Politik*, but rather with *gouvernement* and *Regierung*: concepts which referred to what today is called the 'core executive' (the head of government, the council of ministers, and their immediate staff; cf. Rhodes and Dunleavy 1995). This may seem a minor terminological point, but it is of much theoretical relevance. It reveals that across Continental Europe there was a tendency to regard public administration as a part of the executive or at least under its control. Understandably, this tendency was stronger in French than in German thought; the latter preferred to give administration a place at a greater distance of the traditional powers (hence its contrast between *Verwaltung* and *Verfassung*). In both approaches, however, the (core) executive and the legislature were not yet thrown together under the general heading of 'politics'. When the literal opposition is encountered, occasionally, it is mostly as adjectives (political/administrative) rather than as nouns (politics/administration). Politics has long remained unidentified as a separate function, domain, or sphere of government (cf. Heidenheimer 1986). (Even today, the elusive character of the concept of politics is a substantial problem for thinking about the dichotomy; see the Epilogue.)

In both approaches, furthermore, public administration is contrasted not only with its direct ministerial superiors, i.e., the government or 'core executive,' but also with other concepts like the legislative and, particularly in the German approach, the constitution (*Verfassung*). This reflects the recognition, shared by both the French and Germans, that public administration cannot simply be enlisted among the traditional branches of government. It further implies that public administrators cannot be regarded as the merely passive instruments of their ministerial superiors. The writers examined in this chapter all refused to conceptualize the dichotomy between politics and administration as a simple instrumentalist dichotomy between willing and acting, or deciding and executing. They acknowledged that public administrators inevitably also have a decision-making role, but they relegated this role to particular, mostly secondary issues and framed the distinction between politics and administration often by means of that between laws and regulations. They were also well aware of the theoretical and practical problems involved in separating politics and administration. Far from being naïve, their endorsement of the politics-administration dichotomy seems well-considered and prudent.

In the last quarter of the nineteenth century, the tradition of thinking on the dichotomy stood at crossroads and a decisive, double turn was made. First, the tradition of thinking about the dichotomy migrated from Europe to America. It is important that what is now commonly regarded as an American idea has

European origins which have left their mark on its character. The dichotomy was developed in the Continental-European tradition of abstract and deductive state theory rather than in the Anglo-American inductive tradition of pragmatic reformism to which it later would become associated (Rutgers 2001b). In Europe, in the meantime, the study of public administration almost withered away under the growth of administrative law. In France and Germany, the countries in which Public Administration was first recognized as a distinct academic field, there had always been a close relation with Law, but in the late nineteenth century the independent and social scientific study of public administration was eclipsed by the rise of administrative law, to reemerge only after the Second World War. Except for the important work of Weber, Europeans have therefore contributed little to the theoretical development of the politics-administration dichotomy in the twentieth century. Surely, some scattered reflections on the subject can be found. The Austrian Albert Schäffle, for instance, argued in 1897 that politics is inevitably present in administration as in every other part of the state, but to a decidedly lower degree than in governing and legislating, the two other main state functions he discerned (1897: 584, 595-596; cf. Miewald 1984: 26). And in 1911, the Frenchman Henri Chardon, in a book titled *Le Pouvoir Administratif*, summoned his readers

> "to recognize that a democratic republic like ours necessarily comprises two powers: the political and the administrative; the administrative being subordinate to the political, but nonetheless existing and living outside of politics in such a way that, in every affair, the citizens can easily make a judgment on the role of the politicians and on the role of the administrators" (1911: 19-20).[31]

With this clear formulation of the dichotomy Chardon places himself squarely in the line of thinking here associated with Montesquieu: he aims to control rather than to expand the power of government and offers the interesting paradox (to be discussed later) that administration should be both subordinate and separate at the same time.

Unfortunately, however, the tradition in which Chardon fits has remained largely unknown. This is the other decisive turn that was made: it was the German approach rather than its French counterpart that was exported to the United States and there became extremely influential in later thinking about the dichotomy.

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[31] Original: "[J]e te demande (…) de reconnaître qu'une république démocratique, comme la nôtre, comporte nécessairement deux pouvoirs: le politique et l'administratif; l'administratif étant subordonné au politique, mais existent néanmois et vivant en dehors du politique de telle façon que, dans chaque affaire, les citoyens puissant porter aisément un jugement sur le rôle des politiques et sur le rôle des administratrateurs."

Accounts of the dichotomy that give administration a legitimate and subordinate place within the traditional separation-of-powers framework have therefore never become very important. It is a remarkable irony of history that in America, of all countries, administrative thought would fall under the strong and largely unrecognized influence of Hegel instead of that of Montesquieu, but this is what has happened since the last quarter of the nineteenth century. The importance of this second turn for the later development of Public Administration as a field and for the tradition of thinking about the politics-administration dichotomy can hardly be overestimated.