UNIVERSAL
LIBRARY

OU_166969

UNIVERSAL
LIBRARY

A SURVEY OF

American Government

THE MACMILLAN COMPANY
NEW YORK • BOSTON • CHICAGO • DALLAS
ATLANTA • SAN FRANCISCO
MACMILLAN AND CO, LIMITED
LONDON • BOMBAY • CALCUTTA • MADRAS
MELBOURNE
THE MACMILLAN COMPANY
OF CANADA, LIMITED
TORONTO

OSMANIA UNIVERSITY LIBRARY

Call No. 353 / Z 78S Accession No. PG 5685

Author

Title Survey of American Governm

This book should be returned on or before the date last marked below.

A SURVEY OF American Government

HAROLD ZINK

PROFESSOR OF POLITICAL SCIENCE

OHIO STATE UNIVERSITY

AN ABRIDGMENT OF

Government and Politics in the United States

WITH NEW MATERIAL

THE MACMILLAN COMPANY : NEW YORK

1950

Copyright, 1948, by THE MACMILLAN COMPANY

All rights reserved—no part of this book may be reproduced in any form without permission in writing from the publisher, except by a reviewer who wishes to quote brief passages in connection with a review written for inclusion in magazine or newspaper.

Printed in the United States of America

Previous editions copyright, 1942, 1946
By THE MACMILLAN COMPANY

Second Printing, 1950

To

SIR ERNEST BARKER

WILLIAM A. ROBSON

K. C. WHEARE

British colleagues in Political Science
in appreciation of their friendship during
1943-1945

Preface

In a good many college and university courses dealing with American political institutions there is not sufficient time available for one reason or another to give attention to all of the details which can be included under a more generous schedule. There are doubtless library and other readers who desire a succinct account of government organization and operations in the United States rather than a full-length study. For such courses and readers this survey of the field has been prepared.

In general this book follows the same basic lines which underlie the author's *Government and Politics in the United States*. There is the same organization based on national, state, and local levels of government and a similar emphasis on the functions performed by these various governments. The first chapter discusses the several forms of government which human beings have devised and seeks to fit the democratic form which characterizes the United States into such a background. Throughout the book stress is placed on a lucid explanation of the American type of democracy, its peculiar characteristics, its achievements, and its major problems. Reasonable emphasis has been placed on the historical development of political institutions in the United States since a balanced view of the current situation depends to a considerable extent on a knowledge of the foundations. Believing that an understanding of political institutions is necessarily incomplete unless one is familiar with the human element, a considerable amount of attention is given to citizenship, political parties, pressure groups, and public opinion. Though limitations on space require a circumscription of the details of public administration, an attempt has been made to deal adequately with the basic problem of administration and to present a survey of the specific agencies and programs.

In one important respect this text differs from the longer one. The experience of the military programs in education during World

War II has been diversely interpreted, but almost everyone has agreed that the record demonstrated rather conclusively the value of visual aids. The Committee on Undergraduate Instruction in Political Science of the American Political Science Association has urged the profession to profit from the experiences of the military programs in the visual aid field. Unfortunately the developed resources available in political science are less adequate than might be desired. Many of the charts and other visual aids, appropriate for use in a textbook for example, have been prepared by those not entirely familiar with the practical problems of the classroom. Nevertheless, despite the shortcomings of the materials currently available, considerable use has been made of various charts and diagrams and more than sixty cuts have been included in this book. These should be of considerable assistance to the student in clarifying various aspects of American government.

The author of a text in this field is deeply indebted to colleagues, to students, to government offices, and to research institutes for assistance. It is not possible at this point to express thanks to all of those who have contributed, much as such assistance has been appreciated. To some extent acknowledgment is made in the body of the text in footnotes, bibliographies, and bylines, but there are others not mentioned to whom thanks are due in substantial measure. Particular mention must be made of the benefit derived from numerous suggestions offered by Professors Frank G. Bates and Harry W. Voltmer and of the assistance received from Mrs. Marga Voltmer in the careful typing of the manuscript.

Reference has not been made in the bibliographies to the books of readings prepared by Mathews and Berdahl, Christiansen and Kirkpatrick, Howard and Bone, Fellman, Bishop and Hendel, Rankin, Ewing and Dangerfield, Coker, Pollock, Johnson, Mott, Maxey, Crawford, Kneier, Wright, and others because it is assumed that these are generally known. A great deal of valuable supplementary material is available in these collections.

Harold Zink

Greencastle, Indiana
May, 1948

Contents

1.	The General Character of American Government	1
2.	The Confederation and the Convention of 1787	17
3.	The Constitutional System	26
4.	The Place of the States	42
5.	Federal-State and Interstate Relations	49
6.	Citizenship	58
7.	Rights and Obligations of Citizens	71
8.	The Role of Political Parties	109
9.	The Organization of Political Parties	130
10.	Nominations and Elections	159
11.	Pressure Groups and Public Opinion	182
12.	The Office of the President	208
13.	The Powers and Duties of the President	231
14.	The President and his Cabinet	254
15.	The President and Congress	269
16.	The House of Representatives	286
17.	The Senate	310
18.	A General View of the Powers of Congress	324
19.	The Making of Laws	341
20.	The Federal Courts	367
21.	The Problem of Administration	395
22.	Public Personnel Administration	415
23.	National Finance, Money, and Credit	434
24.	The Government and Business	464
25.	Agriculture, Planning, and Conservation	487
26.	Labor and Social Security	510
27.	Foreign Relations	537

28. National Defense 554
29. State Constitutions 579
30. The Governor 590
31. The State Legislature 615
32. The Legislature in Action 626
33. State Courts 649
34. State Administration 671
35. State Finances 701
36. Territories and the District of Columbia 725
37. County Government 740
38. Cities and Other Local Governments 752
Appendix: Constitution of the United States 775
Index 795

I *The General Character of American Government*

A student of government is interested in many aspects of the United States. He cannot lose sight of the fact that the population is both large and varied, that the 145,000,000 human beings who constitute the people have in their veins the blood of almost all if not all of the diverse stocks of the white race, together with strains of other races. The millions of square miles of territory, located as they are in the temperate zone, separated by broad wastes of ocean from Europe and Asia, and including vast stretches of fertile agricultural lands as well as substantial natural resources in the way of iron, coal, oil, and copper, are of great significance. The remarkable combination of an industrialized economy which is overshadowed by that of no other country and an agricultural productivity which suffices to feed its teeming millions and even leave a surplus can hardly be overemphasized in understanding the achievements and tribulations of the country. The rich cultural background, the traditions of religious freedom, the latent enthusiasm of spirit, and the confidence that no problem however difficult is insurmountable, all play a part in the drama which serves as a background to American government. But these aspects, however important, are of collateral rather than of primary concern to the student of government; their detailed examination belongs to the sociologists, the economists, the geographers, the anthropologists, the psychologists, and others.

The political scientist is especially interested in the structure, organization, and operation of the government of the United States and the pages which follow will deal in some detail with these elements on the national, state, and local levels. In addition a student of government needs a general idea of the political institutions of the United States as a whole in order that he may view

them in proper perspective with the other governments of the world; for even the most detailed knowledge of a single government is of slight avail unless its possessor can correlate that knowledge with the general theory and principles of government. Moreover, familiarity with a single government only makes for supernationalism, provincialism, fanatical over-evaluation, and other weaknesses that are all too apparent in the world in which we live. Unless a student has some understanding of other political systems, it is frequently difficult for him to appreciate certain aspects of our own because he has no standard of measurement. Of course, it is not feasible in this connection to analyze the governments of our sister nations in detail; that is reserved for the courses which deal with comparative and foreign governments. But it will perhaps be possible to build up a general background against which to view the political institutions of the United States.

FORMS OF GOVERNMENT

Classification of Governments The governments which human history records during the several thousand years which it covers have been so diverse that it is not an easy matter to classify them. Outward forms have presented a confusing array which becomes even more complicated when one takes into account the actual operations. For example, there have been kings, emperors, kaisers, czars, and many other monarchs of one kind and another at the head of governments, but not all kings even have exercised the same powers. In certain instances kings have ruled with an iron hand, permitting little or no freedom to their subjects; other kings have exercised considerable authority without being entirely autocratic; while still other kings, for example the recent kings of England, have been formal heads of governments which are actually democratic in character. Many classifications of governments have been attempted since Aristotle wrote his famous *Politics* more than two thousand years ago, but the scope of this book does not permit even a résumé. For our purpose it is perhaps satisfactory to base a classification upon the location of authority and hence to distinguish three general types: (1) governments in which the authority is exercised by a single person, (2) governments dominated by a few persons, and (3) governments which are controlled by the many.

GOVERNMENT BY A SINGLE PERSON

Monarchy It is probable that the monarchical form of government has been more frequently used by the peoples of the world than any other, though it is not at present in great vogue. As man emerged from the more or less primitive stage of political organization which involved the clan and the tribe, frequently with a single powerful leader, it was more or less natural to develop a form of government which devolved around a single person: the monarch or king. In its simplest form monarchy bestows upon the ruler or king absolute authority in every sphere covered by government; indeed some of the monarchs have gone far beyond political matters and laid down rules in regard to family life, commerce, religion, social relations, recreation, and even intellectual endeavors. The king assisted by his ministers and agents ordains the laws, sees that they are enforced, collects the taxes and decides how the money shall be spent, and deals out punishment to those who are insubordinate, thus combining in himself executive, legislative, and judicial functions. Many of the monarchs have been so filled with a sense of their own importance that they have claimed to be the representatives of God on earth; the Japanese emperor was long regarded by law as a lineal descendant of the Sun Goddess.

Limited Monarchy As civilization developed and men became more assertive of their own place under the sun, the monarchial form was modified after long struggle into a limited type which retained the king as the head of the government but took away much of his absolute authority. Legislative bodies were established to enact laws; courts were set up to administer justice; and administrative departments relieved the king of many of the routine tasks. The absolute type of monarchy largely ceased to exist in the seventeenth and eighteenth centuries, though there were isolated cases into the nineteenth century. The limited type was very popular during the nineteenth century, and still finds support in a number of countries. Great Britain nominally retains the outward habiliments of a monarchy, despite its evolution into a representative democracy. Sweden, Norway, Denmark, and Holland are among the countries that maintain a limited type of monarchy in which a large measure of popular control is permitted.

Such countries as Ethiopia and Afghanistan have monarchs with much less in the way of limitations upon their authority.

Tyranny In certain cases kings have become so arbitrary and ruthless that they have degenerated into tyrants. Again usurpers have arisen to seize the throne from a legitimate ruler, only to crush the citizens with an iron heel of oppression. Thus it may be perceived that the tyrannical form of government represents a degenerate type of the monarchical; a single person exercises all the authority of government but in such a ruthless, harsh, irresponsible, and unprincipled manner that he becomes a scourge rather than a father[1] to his people. If he is shrewd, he usually disguises his sins against the people by professing the most pious aims or he diverts the attention of the citizens from their sufferings and his own iniquities by constructing elaborate public works, staging spectacular entertainments, or engaging in foreign aggression.[2] History is able to recite many instances of tyrannical rule; some of the ancient Egyptian pharaohs, rulers of certain Greek states, and several Roman emperors fell into this category. During the Middle Ages and the early centuries of the modern age tyrants were commonplace in Italy as well as in certain other European countries. By the opening of the nineteenth century it seemed that the tyrannical form of government had run its course and for more than a century there were only isolated examples. Then following World War I there occurred a striking revival.

Dictatorships It is the custom to designate the modern tyrannies "dictatorships," but the underlying principles do not seem sufficiently different to justify setting up a separate class, though many of the details are, of course, adapted to a twentieth-century background. In this connection it is interesting to note that Mussolini relied heavily on the advice which Machiavelli offered to an Italian tyrant several centuries earlier. Indeed in both Italy and Germany one was immediately aware of the emphasis placed upon the construction of public works, the gorgeous entertainments and pageantry, and the seizing of territory of sister states—the three activities which tyrants have always used to disguise their avarice for power. In the twentieth century the inhabitants of the earth

[1] Kings often encouraged their people to call them father. Even the Russian czars were often referred to as "Little Father."

[2] This advice was given by Machiavelli in his political classic, *The Prince*.

do not relish unvarnished force or lust for power and hence the tyrants of the totalitarian countries constantly stressed the fact of their leadership—the Duces and the Fuehrers. But this was mere pretense, for these dictators followed the practices of political bosses, not those of political leaders. Moreover, they also drafted certain principles which they labeled as far superior to the "decadent beliefs" of the democracies. Thus Mussolini proclaimed that man comes into his highest and sublimest state only when he fights, while both Hitler and Mussolini sought to convince their subjects that the greatest honor that can come is to give one's life blindly without question for the fatherland. People become mere machines under the modern form of tyranny; they exist for the purposes of the state which is, of course, the dictator, rather than the state for their welfare. Human life is cheap in the eyes of a dictator—Hitler spoke calmly in his *Mein Kampf* of sacrificing the lives of millions of Germans to realize his end. The tyrant of the twentieth century, like his ancient and medieval forbears, has little or no respect for the people; they live only to serve his ends. Their lot is to tighten their belts, shoulder hardships even to death, and always to do so without question. According to *Mein Kampf* they have no minds of their own and are to be guided by the propaganda, often consisting of the most outrageous lies, which the tyrant and his assistants devise for their consumption.

GOVERNMENT BY THE FEW

Another form of government bestows the authority to deal with public affairs upon a group of men rather than upon a single person. There are instances where this has been done openly and directly, but in general, oligarchy, aristocracy, or elite government prefer to operate behind a screen. Thus the nominal form may be monarchical, democratic, or proletarian—a reading of the constitution would lead one to believe that the government was actually one of these forms. However, the king, the president, or the proletarian leaders are figure-heads who have little or no power of their own and take their orders from an influential little coterie which prefers to remain behind the scenes.

Oligarchy and Aristocracy At almost any time there are governments where the actual decisions are made by those who do not hold any public offices and the officials themselves are purely

nominal. The aristocracy of England long played a leading role in the public affairs of that country; the possessors of great wealth in the United States have also been ascribed oligarchic status at times. However, despite the influence which British aristocrats or American millionaires undoubtedly have had and indeed continue to have in governmental affairs, there has been a distinct trend in both countries toward government by the many.

Government by the Elite Blooded aristocracies and oligarchies of wealth cannot be dismissed by the modern student of government, though in both cases they seem somewhat outmoded. The more recent discussion has centered around government by the so-called "elite." Some people have lost whatever faith they ever had in the mass of the people, pointing out that large numbers of European people have been unwise enough to follow Hitler and Mussolini and that many people in the United States seem primarily interested in keeping political machines in power and getting what they can out of the government. Hence it is argued that government should be controlled by those who are intelligent, informed, and wise in their judgments. This suggests the aristocratic form of the Greek philosophers who interpreted aristocracy as something based upon intellect and character rather than upon birth or social position. Many of the arguments advanced in favor of government by the elite sound plausible, though there is a grave doubt whether the intelligent, the informed, and the wise could ever gain control of government and whether they could agree on what to do after they secured authority. People of this type are not known for their organizing ability; nor do they ordinarily have the same point of view or arrive at the same conclusions.

GOVERNMENT BY THE MANY

Democracy A third form of government is that which involves government "of, by, and for the people." Here the combined wisdom of the people is regarded as superior to that of any single king or tyrant or indeed to a group of men.[3] Moreover, the democratic form emphasizes the welfare of the people as the supreme good; political institutions are justifiable only in so far as they contribute to this end, never because of any glory or pomp

[3] See C. J. Friedrich, *The New Belief in the Common Man,* Little, Brown & Company, Boston, 1942.

which is attached to them. In the pure form of democracy the people assemble regularly for the purpose of deciding what the government shall do both as to policy and the levying of taxes and the spending of public funds. They may even assist in the carrying out of these decisions and the assessing of penalties upon those who refuse to abide by the group will. Obviously a pure democracy is possible only in a country where the territory is small and the number of adult citizens appropriate for deliberation. In the ancient Greek city-state these conditions sometimes existed, but they have long ceased to be feasible except in so far as local government is concerned. Some of the tiny Swiss cantons have been organized as pure democracies for centuries and continue to function on that basis; New England towns in the United States preserve the unadulterated principles of democracy in some of their town meetings. However, democracy, as it is known today in practice, is usually of the representative type. The people authorize the adult citizens who have certain qualifications of residence and literacy to elect representatives who in turn enact the laws, levy the taxes, and appropriate the public funds. In addition some representative democracies provide for the election of executive and judicial officers, though others permit the legislatures to handle this function.

Attacks on the Democratic Form A quarter of a century ago it seemed that the democratic form might displace all others and the United States entered World War I "to make the world safe for democracy." At the conclusion of that war Germany transformed itself from a limited monarchy into a representative democracy, while the old Austro-Hungarian empire was broken up into a number of parts, some of which, such as Poland, set up nominally democratic governments, and one, Czechoslovakia, provided for democratic political institutions in practice. The United States, England, and France strengthened their democracies and the prospects appeared bright. But the world-wide economic chaos growing out of World War I, Germany's bitterness engendered by defeat and the terms of the Treaty of Versailles, and the supernationalism which inebriated many peoples placed a tremendous strain on democracy. Critics blamed this form of government for difficulties with which it had little or nothing to do; unscrupulous gangsters driven on by a craving for power seized upon the sufferings and dissatisfactions which were rife as a means of hoisting themselves into

power. Once in the saddle the Hitlers and Mussolinis were disposed to go to any length to maintain themselves and promised enlarged territory and even world domination to those who would follow their banner. Their piratical efforts led to the temporary eclipse of democracies, such as France.

Current Status of the Democratic Form During the dark days following 1940 the future of the democratic form seemed most uncertain, even to many of its most devoted supporters. For a time the very existence of Great Britain, often regarded as the mother of modern democracies, hung as it were by a thread. Prophets of gloom predicted that the United States could not long survive as a democratic nation. Even those who believed that the democracies could withstand the military assaults of the totalitarian countries were by no means certain that they could gird themselves for a mighty struggle without surrendering in large measure the very fundamentals which serve as a foundation for democracy. But the events proved the innate soundness of this form of government. Indeed it is probable that few even among the extreme optimists could have anticipated anything like as impressive a record on the part of the hard-pressed democracies. They not only staved off the attacks of the totalitarian countries, but, as everyone knows, they carried the war to the territories held by the latter and in a series of the most brilliant tactical movements in history actually were able to bring about a complete capitulation of their enemies.

Moreover, all of this was done without the surrender of the democratic system itself. It is true that certain restrictions were placed on the freedom of speech and of the press, but these were comparatively less stringent than in earlier wars. Indeed a frequenter of Hyde Park in London during the days before the invasion by the Allies of the Continent often found himself asking the question: "How can these soapbox orators say the things they do without interference from the police?" The British House of Commons, instead of closing up for the duration, as some advocated, continued to meet even during the worst of the bombing and after its own chamber had been destroyed. Moreover, it actually appeared to take on added stature and to regain vigor which it had lost.

The end of World War II saw the democratic form of government enjoying a prestige never before held. The totalitarian gov-

ernments have unfortunately not disappeared entirely from the face of the earth, but their most prominent examples have encountered perhaps the most decisive defeats known to history. One of the major experiments of the future will involve the program adopted by the democratic Allies aimed at reconstituting the governments of Germany and Japan on a basis that will promote democracy and eventually make it possible for those countries to join the ranks of the democratic governments.

Summary By way of summary, it may be worthwhile to point out that democracies are usually slower in getting organized for action than governments dominated by a single person or by a few persons. This is more or less innate in the very form itself and may be as much a source of strength as a mark of weakness in that it does not encourage irrational plunges that may involve the deaths of millions of people and untold suffering on the part of the whole world. Once the democratic governments do get started on a course, they move with a force which is far more irresistible than that displayed by any other type of government, because they enjoy the popular support which provides the soundest of all foundations. Perhaps the greatest weakness displayed by democratic governments involves the numerous interest groups which frequently seek to make use of public agencies for their own selfish and shortsighted ends. But democracies are by no means the only governments which have to face this problem; indeed, the court intrigues and inner-circle jealousies in a monarchy or dictatorship are probably more serious in their effect.

FEDERAL AND UNITARY GOVERNMENT

Governments may not only be classified as to their general form but also, particularly if they are democratic, on the basis of the distribution and location of their power. Two common types are currently encountered: (1) the federal and (2) the unitary.

The Federal Form If a number of independent governments without surrendering their independence join together to handle certain problems, such as protection against external enemies, which they cannot take care of satisfactorily alone, it is said that a "confederation" has been formed. If the several governments go a step farther, give up their independence, and form a new government, at

the same time retaining certain powers, this is known as a "federal" type.[4] Under this system part of the authority is conferred on the central government, while the remainder is reserved to the component subdivisions or to the people. The thirteen colonies after declaring their independence from Great Britain first entered into a confederation which was expected to handle defense and certain other difficult problems. However, the confederation possessed no genuine authority and could not even levy taxes; consequently its weakness was such that it failed to accomplish what it was intended to do. The convention of 1787, called to work out an arrangement for reducing the weaknesses of the confederation, decided to recommend an entirely new system of government which would be federal in character. Under this the national government was given definite powers relating to foreign relations, national defense, interstate and foreign commerce, public finance and other matters of common concern, while the remaining authority was reserved to the states or to the people. Canada, Australia, Mexico, Brazil, Switzerland, and Argentina are current examples of federal government.[5]

The Unitary Form If all of the power is conferred on a single government which is national in scope, a unitary form results. This does not mean that such a government cannot have subdivisions, since virtually all governments necessarily have to organize under some such arrangement for purposes of administration and of local government. But the final authority resides in the central government and the subdivisions have only such power as the former sees fit to confer on them. As a matter of practice the central government may delegate substantially the same measure of local home rule which is provided under the federal form; the test is not what power is given but the final seat of authority. Under the unitary type this is always the central government. Great Britain, in contrast to the United States, has long functioned as a unitary government, though she has been liberal in permitting the counties and the boroughs a considerable measure of leeway.

[4] An excellent discussion of this form and its current applications is to be found in K. C. Wheare, *Federal Government*, Oxford University Press, New York, 1947.

[5] Some of these are federal outwardly, but there is considerable question whether they are actually federal. Argentina, for example, is a case at point.

Federalism versus Unitary Government in the United States While the United States was originally set up as a federal government and long remained in that category, there are those who believe that federalism has now been displaced by unitary government. The national government has undoubtedly gained large amounts of power which at one time were reserved to the states. The interstate commerce power of the national government, for example, has been expanded again and again until it now embraces a considerable proportion of all of the commerce of the country. The establishment of a powerful Federal Bureau of Investigation has involved some encroachment upon the police domain of the states. Nevertheless, though the national government is stronger than ever before and the states have lost substantial amounts of their exclusive power, it seems very questionable whether the movement has gotten within striking distance of what could accurately be designated "unitary" government in the United States.

SEPARATION VERSUS UNION OF POWERS

A third system of classification hinges upon the distribution of authority within a single government. Using this scale, governments may involve separation or union of powers.

Separation of Powers The framers of the Constitution of the United States saw fit to distribute powers fairly evenly among the executive, legislative, and judicial branches rather than to concentrate supreme political direction in any one of these branches. Hence the national government of the United States has long been known as one of "separation of powers;" it may be added that the states have followed the same pattern. It was the opinion of the members of the convention of 1787 that separating the powers would prevent tyranny, absolutism, and other undesirable characteristics. A complete separation of powers is hardly feasible in practice and the framers being men of experience in public affairs realized this. Consequently they tempered their arrangement by adding checks and balances. The legislative branch was checked by the President through the veto power and it in turn checked the executive through its power to appropriate money, impeach, and, in the case of the Senate, confirm appointments and ratify treaties. The Supreme Court was checked by dependence upon Congress in several respects—for instance, appropriations and appellate juris-

diction—and by the President as regards appointment of justices, and it shortly developed the practice of ruling on the validity of acts passed by Congress and approved by the President.

Results of Separation of Powers in the United States Though the framers were men of more than average maturity and experience, they seem to modern students of government to have been somewhat credulous in their enthusiasm for separation of powers. This provision may prevent tyranny, but it also leads to conflict and indecision. With power divided between the legislative and the executive branches, it may require months to arrive at an agreement concerning some pressing matter which demands immediate attention. One branch of government may be operating on one policy, while the other two are following a quite different course. Presidents have sought to bridge the gap separating them from the legislative branch by asserting a general leadership in affairs of government and some of the abler chief executives have achieved a large measure of success in their endeavors. But while an emergency may bring temporary co-ordination, and the use of patronage can usually be counted upon to pave the way to some action, the national government is still torn into parts by the provision which the framers made for separation of powers. Much of the indecision which is frequently identified with the democratic form is actually attributable to separation of powers.

Union of Powers It is interesting to note that the foreign governments which have studied the constitutional system of the United States have, with the exception of the Latin-American governments,[6] not been impressed by our system of separation of powers and of checks and balances. Instead they have followed the English plan and concentrated the final governmental authority in a single branch, usually the legislative. Thus, whereas the United States has what is often called "presidential government," the other democracies seem to prefer the cabinet or parliamentary type. Under this arrangement the executive and the legislative branches are tied together in a harness which permits little of the pulling apart and at cross-purposes which is all too common an experience in the United States. The executive functions are entrusted to a cabinet, the members of which are drawn from the dominant party in the

[6] Many of the Latin-American constitutions are purely nominal in importance and the practice is otherwise than the constitution specifies.

legislative branch. The cabinet drafts a program for the government which is submitted to the legislature for approval; in case approval is not given, the cabinet must resign [7] and give place to a new cabinet which can secure the support of the legislature. Therefore there cannot be conflict between the two which is more than momentary in duration, since lack of cooperation brings immediate reconstruction of the government personnel.

SPECIAL CHARACTERISTICS OF THE NATIONAL GOVERNMENT

In the foregoing paragraphs it has been pointed out that the government of the United States is of the representative democratic type, that it is federal rather than unitary, and that powers are divided among the branches rather than centralized in the legislature or the executive. It now remains to note several other characteristics which pertain to the national government.

Enumerated Powers In a federal type it is necessary to divide up the authority between the central and the state governments. This may be done by conferring specific powers on one and leaving the rest, in so far as they are not reserved to the people themselves, to the other or it may be achieved by enumerating the powers of both. The framers of the Constitution were of the opinion that the wisest arrangement under the prevailing circumstances was to leave the states in possession of those powers which experience had indicated could be satisfactorily exercised by them and to grant the others specifically to the national government. It may be added that certain powers were reserved to the people and were not to be used by either government. Having arrived at this conclusion it remained to enumerate the powers which were to belong to the national government and this was done under some eighteen headings in the Constitution. The difficulties encountered by the government set up under the Articles of Confederation demonstrated quite conclusively that a central government must be given authority over interstate and foreign commerce, foreign relations, national defense, and the levying of taxes to produce funds for its own operation; these spheres are the main ones which were specifically assigned to the national government.

[7] But first it frequently dissolves Parliament and calls for an election to see whether the voters will not elect a new Parliament which will support its policy.

Supremacy In so far as the national government was given certain powers it is supreme in the exercise of those powers. A separate system of federal courts was established to render it possible for the national government to enforce its decisions; in cases of conflict between the national and the state governments the Supreme Court received authorization to work out a settlement. Inasmuch as the fields given to the national government are of far-reaching importance, the supremacy of that government became apparent from the first and has remained firmly established for more than a century and a half.

Implied Powers Though the original Constitution made no mention of implied powers which would permit the national government to expand its enumerated powers to keep pace with changing conditions, the Supreme Court approved that interpretation of the Constitution in 1819 in the *McCulloch* v. *Maryland* case.[8] Hence the national government is not static in its authority, for as new problems have presented themselves it has frequently been possible to imply the authority to handle them from one or more of the powers enumerated in the original Constitution. This has sometimes required delay because the Supreme Court was reluctant to permit such an expansion of federal powers, but in the end it has usually been accomplished. This characteristic has naturally led to the strengthening of the national government through the years, even though the states have had to be reduced in extent of power.[9]

Limitations Although the framers of the Constitution appreciated the importance of giving the national government supreme powers in certain areas, they also were mindful of the possibility that abuse might creep in and consequently they imposed several limitations. The taxing power, for example, was restricted by the prohibition against export taxes and the requirement that direct taxes must be apportioned among the states according to population. No *ex post facto* laws or bills of attainder were to be passed; no titles of nobility could be granted; no preference should be given by any regulation of commerce to the ports of one state over those of another; the writ of habeas corpus was not to be suspended ex-

[8] This topic is discussed in greater detail in Chap. 3.

[9] The doctrine of implied powers is dealt with in more detail in subsequent chapters dealing with the growth of the Constitution and the Supreme Court. See Chaps. 3 and 20.

cept in cases of rebellion or invasion. Almost immediately after the Constitution became effective ten amendments were added to meet objections which had been raised; eight of these recited a fairly long list of limitations which were to be imposed upon the national government in order to protect individual personal and property rights.[10]

Selected Bibliography

Appleby, P. H., *Big Democracy*, Alfred A. Knopf, New York, 1945.

Barker, Ernest, trans., *The Politics of Aristotle*, Oxford University Press, London, 1946.

Bishop, H. M., and Samuel Hendal, *Basic Issues of American Democracy*, Appleton-Century-Crofts, Inc., New York, 1948.

Bryce, James, *Modern Democracies*, 2 vols., The Macmillan Company, New York, 1921, Vol. II.

Carpenter, W. S., *The Development of American Political Thought*, Princeton University Press, Princeton, 1930.

Coker, F. W., *Recent Political Thought*, D. Appleton-Century Company, New York, 1934.

Corry, J. A., *Elements of Democratic Government*, Oxford University Press, New York, 1947.

Finletter, Thomas K., *Can Representative Government Do The Job?* Reynal & Hitchcock, New York, 1945.

Friedrich, C. J., *The New Belief in The Common Man*, Little, Brown & Company, Boston, 1942.

Garner, J. W., *Political Science and Government*, American Book Company, New York, 1928.

Holcombe, A. N., *The Foundations of the Modern Commonwealth*, Harper & Brothers, New York, 1923.

Jacobson, J. M., *The Development of American Political Thought*, D. Appleton-Century Company, New York, 1932.

Lindsay, A. D., *The Modern Democratic State*, 2 vols., Oxford University Press, New York, Vol. 1, 1947.

MacIver, R. M., *The Web of Government*, The Macmillan Company, New York, 1947.

Maxey, C. C., *The History of Political Thought*, The Macmillan Company, New York, 1939.

[10] See Chap. 7.

Merriam, C. E., *American Political Ideas*, The Macmillan Company, New York, 1920.

——, *What is Democracy?*, University of Chicago Press, Chicago, 1941.

Peel, Roy V., and J. S. Roucek, eds., *Introduction to Politics*, The Thomas Y. Crowell Company, New York, 1941.

Sait, E. M., *Political Institutions*, D. Appleton-Century Company, New York, 1938.

Wheare, K. C., *Federal Government*, Oxford University Press, New York, 1947.

Wilson, F. G., *The Elements of Modern Politics*, McGraw-Hill Book Company, New York, 1936.

Wilson, Woodrow, *Congressional Government*, rev. ed., Houghton Mifflin Company, Boston, 1925.

Wright, B. F., Jr., *Source Book of American Political Theory*, The Macmillan Company, New York, 1929.

2 · *The Confederation and the Convention of 1787*

STATE GOVERNMENTS

After the Declaration of Independence had been made, some time elapsed before steps were taken to set up any system of central government beyond the Continental Congress. In the meantime the various states necessarily established their own governments and handled the most pressing problems as best they could. Inasmuch as they had existed as colonies before the Declaration of Independence from England, they had had general experience in dealing with public affairs and consequently already had at hand a foundation on which to build a new system of state government. Even before Congress in 1776 called on the states to draft constitutions, Virginia had seen fit to make such a provision for itself. The other states, except for Rhode Island and Connecticut which used their colonial charters as constitutions, followed the same course within a few years. These constitutions naturally varied in character and quality, but several of them reached a high level of excellence and have endured with certain changes for more than a century and a half.

THE CONFEDERATION

Articles of Confederation In November, 1777, Congress finally proceeded to draft Articles of Confederation intended to meet the demand for some sort of central government. The several states had developed such local pride and were so jealous of their authority that Congress exercised great caution in taking action, making provision only for a loose confederation rather than for a federal or unitary type of government. The states retained a large measure of sovereignty and entered into an agreement to tolerate a central government only to grapple with certain vexing matters which

were the source of serious difficulty. Despite the weak character of the Confederation, ratification was not completed until 1781, when Maryland finally was sufficiently placated in the matter of western lands to consent to the Articles.

Government under the Articles The Articles of Confederation provided for a Congress to be made up of delegates (or ambassadors) from the states, varying from two to seven in number. But the size of a state delegation mattered little, since each state had one vote in Congress irrespective of the size of its delegation. Delegates were elected on an annual basis and paid by their states; no delegate could serve more than three years out of any six. A majority of the delegates of a state determined its vote. Two thirds of the states had to be in agreement to take any important action. No effective executive was provided by the Articles of Confederation and no courts of any variety. Unanimous consent of the states had to be obtained for amendments.

Confederation Powers Under the Confederation, Congress received full responsibility for foreign relations. It could declare war and make peace, send and receive diplomatic representatives, enter into treaties and alliances, handle Indian affairs, fix standards of coinage and of weights and measures, and organize a postal system.

Weakness of the Confederation But the Confederation had no authority to tax and had to depend upon requisitions to the states which were all too often not met. Nor could Congress regulate interstate commerce or even foreign commerce except indirectly through its treaty-making power. These were exceedingly serious weaknesses. A paralyzing depression made financial grants from the states most uncertain and doubtless led the states to resort to tariffs and trade restrictions on commerce with sister states. With financial support so lacking—only about 10 per cent of the amounts levied on the states was paid in—the Confederation could not exercise in any satisfactory manner even the very limited authority conferred on it. The result was that critics became more and more vigorous in their attacks and a demand for a change reached large proportions.

The Alexandria and the Annapolis Conferences With widespread domestic disorder threatened, the western settlers disposed to question the authority of the states, foreign relations weakly handled, and numerous interstate commercial squabbles, various

proposals were forthcoming as to possible action. A conference was held at Alexandria, Virginia, in 1785 in order to reconcile disputes arising out of navigation on Chesapeake Bay and the Potomac River. This proved successful on the immediate points involved, but it was apparent that the whole field of interstate commerce urgently needed attention. Hence the Virginia legislature sponsored a meeting to be held at Annapolis in September, 1786. For various reasons this meeting was attended by representatives of only five of the states and hence obviously could do comparatively little. However, it did prepare a report drafted by Alexander Hamilton which pointed out in an incisive manner the weaknesses of the Articles of Confederation. Furthermore, it recommended the calling of another convention to be held in Philadelphia the following year for the purpose of remedying the defects.

THE CONVENTION OF 1787

The Formal Call for a Convention The general demand for attention to the difficult problems confronting the newly independent states led Congress to add its approval to the call sent out by the Annapolis meeting. But Congress specified that the convention should limit itself to proposing amendments to the Articles of Confederation and implied that any actual changes would require the approval of all of the thirteen states. No provision was made as to the method of choosing delegates; actually they were selected in every case by the state legislatures.

The Delegates Seventy-three delegates were designated by twelve states (Rhode Island did not choose to name representatives), though only fifty-five of these ever participated in the convention. These fifty-five men naturally varied a great deal in ability. A few exhibited such scant interest and little force that only their names remain to posterity. A larger number were men of moderate strength who had been active in the affairs of their respective states and consequently were logical choices, irrespective of any special fitness for constitution-drafting. But most significant of all, a comparatively large proportion displayed distinct ability and notable force. Perhaps never in our history have we seen a public assemblage with as many outstandingly able men as the convention of 1787.

Outstanding Members There was George Washington with the immense prestige gained from his role in leading the colonies

to independence. Benjamin Franklin whose many years had been filled with a variety of valuable experiences could hardly speak above a whisper and had to be helped to his feet, but his sage judgment proved most helpful. The brilliant young James Madison perhaps contributed more than any other delegate to the detailed contents of the new Constitution and certainly added substantial strength to the convention. James Wilson and Gouverneur Morris, less scintillating than others perhaps, nevertheless performed very important services. Alexander Hamilton, though less active than certain others, deserves specific mention. Thomas Jefferson, who might ordinarily have been an outstanding member, was not a delegate because of absence in Europe.

Backgrounds of the Delegates Several aspects of the backgrounds of the delegates deserve brief mention. Though ranging through all mature ages, the group included an unusually large proportion of men under forty, several of whom exerted great influence. At a time when attendance at a university was quite the exception rather than the rule, many of the delegates were college men. In general, the delegates came from the upper middle class and had conservative attitudes. Small farmers and laborers had none of their class designated by the various state legislatures. Dr. Charles A. Beard has studied the property interests of the delegates and found that many owned government securities, insurance stock, and western lands.[1] On this basis some have concluded that the work performed at Philadelphia can be interpreted largely if not exclusively in economic terms. One cannot doubt that some delegates were influenced by such factors, but many of the holdings were small while their owners were men of broad interests. Therefore to explain the Constitution primarily on the basis of the economic interests of the delegates seems an unwarranted oversimplification.

The Convention Assembles The call stipulated that the convention would open in Philadelphia on May 14, 1787, but when that day came only a small number of delegates had arrived. It seemed for a time that the prospects of holding a convention were far from good; however, those who had made the journey to Philadelphia waited there and by May 25 twenty-nine delegates were present.

[1] See his *An Economic Interpretation of the Constitution of the United States*, rev. ed., The Macmillan Company, New York, 1935.

On that day a meeting was held in Independence Hall and George Washington was chosen as presiding officer. For three and a half months meetings were held during one of the hottest summers on record, with rarely more than thirty or so in attendance. It was decided that sessions should be closed to the public—which would be a strange procedure for a constitutional body today. But the delegates appreciated the delicacy of their positions and apparently felt with good reason that their states would recall them if reports went out of the discussions having to do with highly controversial subjects.

The Conflict between the Large and Small States For the most part, the delegates possessed such social graces that they enjoyed pleasant personal relations, but as representatives of the states their views on public questions differed sharply. The most serious cleavage grew out of the conflict between large states, such as Virginia, New York, Pennsylvania, and Massachusetts, and states with small populations such as Delaware and New Jersey. For a time it seemed that no possibility existed of reconciling the two points of view. Had it not been for the able presidency of Washington, it is quite possible that a hopeless deadlock might have ended the convention with nothing achieved.

The Virginia Plan The states with the large populations supported a plan frequently referred to as the "Virginia Plan." This proposed a two-house legislative body. The lower house was to be representative of the states on the basis of population and this would have meant sixteen or seventeen seats for both Virginia and Massachusetts and only a single seat for Delaware and Rhode Island. The upper chamber was to be chosen by the lower house and would consequently also reflect large-state interests. Naturally the small states feared the outcome of such a system and hence violently opposed the plan.

The New Jersey Plan and the Compromise Countering the Virginia Plan the smaller states drafted the so-called "New Jersey Plan." This provided a legislative body in which every state irrespective of population would have an equal voice. Of course, this proposal did not meet the approval of the larger states. After much debate which in the hot weather led to some frayed tempers, a compromise was finally worked out which saved the day. To differentiate this compromise from the several others the title "Great

Compromise" is sometimes employed, and considering the results it is undoubtedly warranted. Under this arrangement a legislative body of two houses was agreed upon. The lower house would represent the states on the basis of their populations, while the upper would give each state, large or small, two seats and two votes. The members of the lower house were to be elected by direct popular vote. To give every possible safeguard to the individual states, the members of the upper chamber were to be chosen by the state legislatures.

The Three-fifths Compromise With the thorny problem of the large versus the small states out of the way, the convention disposed of other questions more easily. In the matter of counting slaves to determine the representation of a state there were some who argued against any credit for slaves whatsoever, whereas others demanded full equality for slaves in computing seats in the lower house of Congress. The issue was complicated by the question of what status to give slaves in assessing direct taxes. A curious compromise was reached which stipulated that a slave should be considered as three fifths of a free person for both purposes: apportionment of legislative seats and direct taxation.

The Executive It was generally agreed by the delegates that a more satisfactory provision than the Articles of Confederation made for an executive should be adopted. But should there be a single or plural executive? Should the executive be given life tenure or a short term? What manner of selection should be arranged and what title should be used? It was wisely decided to have a single executive and to designate him the "President." An initial compromise between those who wanted life tenure and their opponents resulted in a provision for a single seven-year term; this was changed at the very last to a four-year term with no restriction upon reelection. A less satisfactory solution was hit on as to the method of selection and the cumbersome electoral-college method of indirect election was adopted.

Powers of the President Some of the delegates seemed to have in mind a weak executive with high social position, but the general sentiment supported the granting of extensive powers. Nevertheless, remembering the autocratic colonial governors, care was exercised lest the President become too unlimited in authority.

Hence provisions specifying checks by Congress found their way into the new Constitution.

Commerce On the question of what powers to give the central government over commerce a split developed between the mercantile northern states and the southern states which exported agricultural products and in turn imported manufactured commodities. The former favored quite extensive national control over commerce. The latter feared the possible use of such authority against their interests. It was finally agreed that interstate and foreign commerce might properly be regulated by Congress, leaving intrastate commerce by implication under state control. No taxes on exports were to be permitted in contrast to authorization for import taxes. Importation of slaves could not be prohibited until 1808; nor could a head tax exceeding $10 be levied on each person imported.

Judiciary There was some difference of opinion as to a judiciary. Certain delegates saw no need for federal courts at all, but the general sentiment favored a federal Supreme Court with limited jurisdiction. As to whether lower federal courts had any place, considerable doubt apparently manifested itself. It was decided to give Congress the power to establish such lower federal courts as might seem desirable, but no specific federal courts below the Supreme Court were provided. The jurisdiction of the federal judiciary was limited to federal matters, to disputes among the several states, and to cases involving diversity of citizenship.

RATIFICATION AND THE STARTING OF THE NEW GOVERNMENT

Debate on Ratification Having finished its debates and settled the main points of disagreement the convention approved the Constitution in draft form and submitted it to the states for ratification. Despite the unanimity clause in the Articles of Confederation, the delegates had the boldness to specify that the new Constitution should go into effect after nine states had ratified it. The reactions to the proposed Constitution were varied. Some felt quite strongly about the complete displacement of the Articles, but the weakness displayed by the Confederation went far toward offsetting such a point of view. Others feared that the states would lose their complete sovereignty under such a system. Still others objected to the lack of a formal bill of rights. In short, there were

large numbers of criticisms, but no united hostility to any single provision. During the debate James Madison, Alexander Hamilton, and John Jay joined together to prepare a series of notable papers known as *The Federalist* which first appeared in New York and were later widely republished throughout the states. These papers discussed various current problems and strongly urged the adoption of the proposed Constitution. They undoubtedly had considerable influence in the direction of ratification.

Ratification Some of the states ratified quite promptly; others hesitated. By the end of 1787 ratifications started to come in —with Delaware being the first to take action on December 7, 1787. Slightly over six months later New Hampshire put the Constitution into formal effect by being the ninth state to ratify. But the key states of New York and Virginia had not yet ratified and it was hardly conceivable that the new government could be set up until both agreed to participate. On June 25, 1788, Virginia ratified by a vote of eighty-nine to seventy-nine and just over a month later New York, after much indecision, gave its consent by a closely contested vote. North Carolina would not ratify until a bill of rights had been added.[2] Rhode Island did not see fit to call a convention to consider the Constitution.

The New Government On September 13, 1788, the Congress of the Confederation called on the states to choose presidential electors, Senators, and Representatives. The first Wednesday of March, 1789, was set as the date for getting the new government under way. But majorities of both houses of Congress did not arrive in New York, the temporary capital, to count the electoral votes until April sixth. It was April 30 before George Washington reached New York to assume the office of President. Even then the new government existed in only a fragmentary form because the Constitution left many fundamental steps to be taken by Congress. Administrative departments—the departments of State, War, and Treasury—had to be provided by congressional action. The establishment of a judiciary, the tax system, and other basic matters also depended upon legislative action. Certain steps in this direction were delayed until 1790 or later.

[2] Most of the states called for a bill of rights in considering ratification, but only North Carolina refused to ratify because of the absence of such a bill of rights.

Selected Bibliography

Beard, Charles A., ed., *The Enduring Federalist*, Doubleday & Company, New York, 1948.

——, *The Republic*, The Viking Press, New York, 1943.

Dilliard, Irving, *Building the Constitution*, St. Louis Post-Dispatch, St. Louis, 1937.

Elliot, J. *Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 5 vols., J. B. Lippincott Company, Philadelphia, 1937.

Farrand, Max, *The Framing of the Constitution*, Yale University Press, New Haven, 1913.

——, *The Records of the Federal Convention*, 4 vols., Yale University Press, New Haven, 1937.

Hendrick, B. J., *Bulwark of the Republic; A Biography of the Constitution*, Little, Brown & Company, Boston, 1938.

Hockett, H. C., *The Constitutional History of the United States, 1776-1826*, The Macmillan Company, New York, 1939.

Madison, James, *The Debates in the Federal Convention of 1787*, ed. by G. Hunt and J. B. Scott, Oxford University Press, New York, 1920.

Madison, James, Alexander Hamilton, and John Jay, *The Federalist*, G. P. Putnam's Sons, New York, 1888.

McLaughlin, A. C., *Constitutional History of the United States*, rev. ed., D. Appleton-Century Company, New York, 1935.

Prescott, A. T., comp., *Drafting the Federal Constitution*, Louisiana State University Press, Baton Rouge, 1941.

Swisher, C. B., *American Constitutional Development*, Houghton Mifflin Company, Boston, 1943.

Warren, Charles, *Making the Constitution*, Little, Brown & Company, Boston, 1937.

Wilson, F. T., *Our Constitution and Its Makers*, Fleming H. Revell Company, New York, 1937.

Wright, B. F., *Growth of American Constitutional Law*, Reynal & Hitchcock, New York, 1942.

3 · *The Constitutional System*

WHAT THE CONSTITUTIONAL SYSTEM INCLUDES

The term "Constitution" of the United States has been so loosely used by writers and speakers that it has anything but an exact meaning in the minds of the rank and file of American citizens. To the majority of people the term probably is synonymous with the document which was drafted by the convention which met in Philadelphia in 1787. Others would add to that brief but remarkable state paper the twenty-one formal amendments which have been adopted during the subsequent 150 years. Actually the constitutional system includes a great deal more than the document of 1787 and its amendments. It is highly important to add the numerous interpretations which the Supreme Court has from time to time made of the original provisions. Then, too, there are the basic laws, such as the Judiciary Act and the Presidential Succession Act, which Congress has enacted to amplify and carry into effect the various grants of the Constitution of 1787. Finally, one cannot forget the multitude of customs and conventions relating to the governmental system which have grown up through the years and which enter frequently and substantially into the actual conduct of government in the United States. To summarize, it may be stated that the American constitutional system of today is made up of: (1) the Constitution of 1787, (2) the twenty-one amendments which have been added to it, (3) the interpretations which the Supreme Court has handed down relating to these first two items, (4) laws which have been passed by Congress to carry the provisions of the original Constitution and formal amendments into effect, and (5) the customs and usages which have grown up around and about the governmental institutions of the United States. These five elements are of sufficient importance to justify a somewhat detailed examination, and will be discussed in the remainder of this chapter.

THE CONSTITUTION OF 1787

General Characteristics In the preceding chapter attention was given to the difficult decisions which had to be reached in regard to the composition of Congress, the nature of the presidency, power of the federal judiciary, the authority of the central government over commerce, and other basic matters. Consequently it is not necessary to repeat the details at this point. The implementation of these provisions of the Constitution of 1787 is discussed in almost every subsequent chapter of this book. Hence at this time it remains only to make a few general comments and to present a table of contents.

It is readily apparent to even the most casual of students that the Constitution of 1787 is far from a lengthy document, covering as it does less than twelve pages in the Appendix of this book. It is far shorter than most national constitutions and indeed is less than one tenth as voluminous as a number of the state constitutions. At the time of its framing there were those who expressed disappointment that certain omissions had been permitted and that where provision had been made the language was general rather than detailed in character. The framers of the Constitution were human and though they produced a remarkable document it is by no means perfect. It is, therefore, not treasonable to admit that there may be some basis for the dissatisfaction of those who expected a more lengthy document. However, in general it is fair to state that the brevity of the Constitution has been an asset rather than a liability during the more than 150 years which have elapsed since the drafting. During the early years more specific provisions might have saved some uncertainty, but times change rapidly and such details would doubtless have been outmoded long ago. The result would have been the necessity of rather complete overhauling or the handicap of an outworn guiding document. Much of the permanence of the Constitution of 1787 may be attributed to its brevity which in turn goes back to the very general character of most of its provisions.

Those who are familiar with constitutions and related public documents both in this country and in foreign countries are almost without exception impressed by the fine phraseology of the Constitution of 1787. Very few state papers of this or any other period

of history equal it in clarity, well-chosen language, and orderliness. The framers included some sticklers for good form in writing, with the result that after the decisions had been made as to contents a careful revision was executed by Gouverneur Morris.

Contents of the Constitution of 1787 The Constitution of 1787 consists of a preamble and seven rather brief articles. Article I, divided into ten sections, is approximately as lengthy as the remainder of the articles combined and deals with the legislative branch of the government, providing for its structure, its power, and its limitations. Article II, subdivided into four sections, relates to the executive branch of the government and is devoted largely to the presidency. Article III, with three sections, provides for the judicial branch of the government but leaves to the discretion of Congress the exact nature of the court system beyond specifying that there shall be one Supreme Court. Article IV, having four sections, lays down a small number of requirements in regard to interstate relations and the relations between the central government and the states, including the creation of new states. Article V, a single paragraph, outlines the process of formally amending the Constitution, while Article VI, also consisting of but a single section, makes the Constitution, laws passed in pursuance thereof, and treaties made under the authority of the United States the supreme law of the land.[1] Article VII runs to but one sentence of two printed lines and has to do with the ratification of the Constitution.

FORMAL AMENDMENTS

The Amending Process The formal process of amending the Constitution of 1787 is provided for in detail in that document itself. There are two stages: proposal and ratification, both of which may be handled in two ways. Amendments may be proposed by the two houses of Congress if two thirds of the members voting thereon are favorable (A quorum must, of course, be present). The Supreme Court has held that the amendment process is distinct from that of ordinary legislation and hence that the signature of the President is not required.[2] All amendments thus far submitted for ratification have been proposed by this method. However, the Constitution

[1] Debts incurred by the Confederation are guaranteed by this Article.
[2] See *Hollingsworth et al.* v. *Virginia*, 3 Dallas 378 (1798).

declares that Congress shall call a special convention for proposing amendments if the legislatures of two thirds of the states request. After amendments have been proposed, they are submitted for ratification to the states via the office of the Secretary of State and the several state governors. Ordinarily they go to the legislatures in the states, but an alternative is to submit them to state conventions. When the legislatures or conventions of three fourths of the states have ratified and when their governors have notified the Secretary of State, the amendment is proclaimed in effect. The vote in the state legislatures or state conventions is by simple majority. It may be added that all of the amendments, with the single exception of the Twenty-first, were ratified by state legislatures. In the case of the Twenty-first Amendment Congress decided that a more accurate expression of popular opinion might be secured through state conventions.

Criticisms of the Amending Process There are many who feel that the process of formal amendment is too difficult. They point to the inconsistency of majority rule with the provisions requiring two thirds approval of Congress together with the ratification of three fourths of the states. They are especially alarmed at the considerable amount of time which ordinarily is required to complete the process. Furthermore, they point to the extremely high mortality rate in the case of proposals to amend; out of approximately three thousand joint resolutions calling for amendment proposals introduced in Congress since 1789 only twenty-seven have been adopted.[3] Of these, twenty-one have, of course, been ratified by the necessary number of states and have become effective. Certainly the chances of getting an amendment accepted by Congress and ratified by a sufficient number of states are not good.

Is the Constitution Rigid? Foreign observers of the government of the United States almost always comment on the complicated character of the amendment process and conclude that the American Constitution is perhaps the most rigid constitution in the world. If the formal process were the only means of changing the constitutional system of the United States, the situation would be

[3] See M. A. Musmanno, "Proposed Amendments to the Constitution," *United States Senate Document 93*, 69th Congress, 1st Session, Government Printing Office, Washington, 1926; also J. Tanger, "Recent Proposals to Amend the Constitution of the United States," *Temple Law Quarterly*, November 1936.

serious indeed. With only ten amendments added since 1800, despite the revolutionary changes that have taken place in almost every phase of human endeavor, it might seem obvious to anyone that either the framers of 1787 were supermen who could foresee conditions indefinitely or that the country had been forced to get along without highly desirable changes. Considerable credit for the fact that the latter has not been the case is due the framers for their

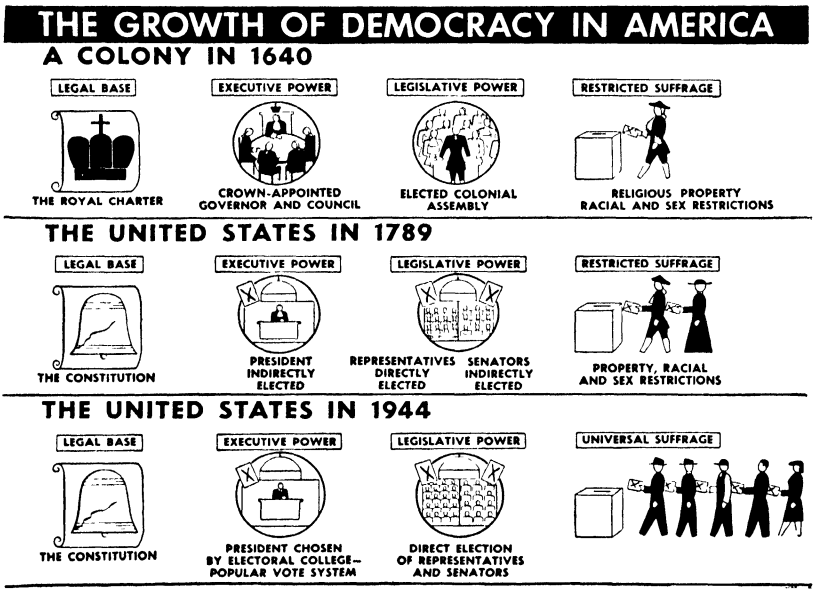


Chart by Graphics Institute, N.Y.C.

restraint in not providing in a detailed manner for posterity. The general character of most of the original Constitution has made it possible to adapt it to the changing conditions of successive generations. Many important changes in the constitutional system have been made by judicial decisions; others have been brought about by statute.

American and British Constitutions Compared A comparison of the British and the American constitutional systems fails to reveal any great difference in amount of change. The British constitution may be formally amended with a modicum of red tape;

a mere act of Parliament suffices. In the United States the formal process is burdensome, but other methods have grown up which are much less onerous. In some respects the English have gone farther and proceeded more rapidly than the United States: the regulation of business and the application of the merit principle to the public service. In other respects, such as the broadening of the suffrage, the United States has taken first place.

The First Ten Amendments The first ten amendments were added almost immediately after the new government got under way —to be exact, in 1791. They have sometimes been regarded as a single amendment because they are primarily concerned with the rights of the people and because they were drafted as a body to meet the objections of those who were not satisfied with the work of the Philadelphia convention. Actually only the first eight deal with what would ordinarily be included in a bill of rights. The Ninth provided that "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." There was some feeling that the status of the states was not sufficiently safeguarded and hence the Tenth Amendment categorically stated that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Eleventh and Twelfth Amendments One of the early cases [4] decided by the Supreme Court laid down the rule that a state could be sued by citizens of another state. Much consternation grew out of this decision, for the states were inclined to view it as an intolerable restriction on their sovereign powers. The Eleventh Amendment, proclaimed effective in 1798, was drafted to correct this situation and states that "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

It was apparent in the election of 1800 [5] that the scheme for electing a President and a Vice-President was not adapted to a sys-

[4] This was the case of *Chisholm* v. *Georgia*, 2 Dallas 419 (1796).

[5] In the election of 1800 both Jefferson and Burr received the same number of votes in the electoral college and consequently appeared to have equal claim to the presidency, although the electors had Jefferson in mind for President. By providing separate election of the President and the Vice-President such an anomalous situation would be rendered impossible.

tem dominated by political parties.[6] The Twelfth Amendment, which became a part of the Constitution in 1804, sought to remedy this lack by specifying that the President and the Vice-President should be elected separately.

Thirteenth, Fourteenth, and Fifteenth Amendments The Thirteenth, Fourteenth, and Fifteenth Amendments are often referred to as the "Civil War Amendments" because they grew out of the conflict between the North and the South involving the status of Negroes. The first of these, proclaimed in effect in 1865, prohibits slavery and involuntary servitude. The Fourteenth Amendment, which is dated almost three years later, sought to guarantee the privileges and immunities of citizenship to the Negroes. It contains two of the most controversial sections of the entire Constitution: "nor shall any State deprive any person of life, liberty, or property without due process of law" [7] and "nor deny to any person within its jurisdiction equal protection of the laws." The first of these, although intended to protect Negroes, actually has been used primarily by corporations which have objected to state regulation. The second has come into considerable prominence during the last decade because of the very important series of cases decided by the Supreme Court dealing with equal educational opportunities, right to adequate counsel, application of third-degree methods, and so forth.[8] In section 2 of the Fourteenth Amendment is one of the best examples of a part of the Constitution which has not been enforced although it has never been repealed. This declares that representation in the lower house of Congress shall be reduced in those states which deprive adult male citizens of their suffrage.[9] Likewise, the Fifteenth Amendment is another instance of a constitutional requirement which has been frequently ignored; it states that neither

[6] In fact, one writer states that the electoral college plan presupposed that Washington "was going to live practically forever." See E. S. Corwin, *The President: Office and Powers*, New York University Press, New York, 1940, pp. 50-51.

[7] Approximately 40 per cent of the recent cases of the Supreme Court involve this clause.

[8] See *Powell* v. *Alabama*, 287 U. S. 45 (1932), and the series of so-called "Justice Black cases"—*Smith* v. *Texas*, 311 U. S. 128 (1940); *Chambers* v. *Florida*, 309 U. S. 227 (1940); *Pierre* v. *Louisiana*, 306 U. S. 354 (1939).

[9] If enforced, southern states would have serious reductions in their congressional seats.

the United States nor a state shall deny the voting privilege on "account of race, color, or previous condition of servitude."

Sixteenth and Seventeenth Amendments Many students of the American constitutional system believe that the Sixteenth Amendment should never have been made necessary.[10] This amendment authorizes Congress to levy income taxes irrespective of the source of the income and without apportionment among the states. In the Springer case,[11] which dates from the 1870's, the Supreme Court upheld an income-tax law enacted by Congress, but in the *Pollock* v. *Farmers Loan and Trust Company* case (1895) it threw out a similar law on the ground that an income tax is a direct tax which must be apportioned among the states on the basis of population.[12] The Sixteenth Amendment was added in 1913 to remove any doubt as to the authority of Congress in this exercise of power. The rising tide of democracy beat upon the plan of indirect election of Senators and substituted in the Seventeenth Amendment, put into effect in 1913, their direct election by the voters.

Eighteenth and Twenty-first Amendments While there are several sections of the formal Constitution which, as has been pointed out, are not at present generally heeded or which have been modified by subsequent amendment, there is but one outstanding example of outright repeal. The Eighteenth Amendment was added in 1919 as the result of intensive effort on the part of the antiliquor forces over a period of years; it prohibited the "manufacture, sale, or transportation of intoxicating liquors." The Twenty-first Amendment, rushed through in record time in 1933, specifically repealed this prohibition.

Nineteenth and Twentieth Amendments The Nineteenth and the Twentieth Amendments, dating from 1920 and 1933 respectively, have been judged by many competent observers to be among the most important amendments. The first removed the suffrage discrimination against women and in one fell swoop virtu-

[10] In *Helvering* v. *Gerhardt,* 304 U. S. 405 (1938), Justice Harlan F. Stone inclined toward this view.

[11] *Springer* v. *U. S.,* 102 U. S. 586 (1880).

[12] This case is reported in 158 U. S. 601 (1895). Using the doctrine that a tax on income is indistinguishable from a tax on the source of income, the Supreme Court decided that a tax levied on income derived from land and public securities was a direct tax.

ally doubled the number of qualified voters in the United States. The second, known as the "Lame Duck Amendment," advanced from March 4 to January 20 the beginning of a presidential term of office. More important than that, it had the effect of reducing the period between the election of Senators and Representatives and the taking of seats and actual exercise of lawmaking functions from thirteen to approximately two months.

Summary In summary, it may be pointed out that the twenty-one amendments have not made any radical changes in either the structure or powers of the government of the United States. The addition of a bill of rights is generally regarded as very wise. The Eighteenth and the Twenty-first Amendments more or less cancel out. The remaining amendments are responsible for moderate and on the whole necessary changes. However, it is quite clear that the most important changes in the American system of government have not been brought about by formal amendments.

Recent Supreme Court Decisions Bearing on the Amendment Process In some of the more recent proposals to amend,[13] Congress has specified a time limit of seven years for ratification. The Supreme Court in *Dillon* v. *Gloss* [14] (1921) considered such a stipulation and held it to be reasonable and within the power of Congress. Inasmuch as no such time limit was included in the text of the child-labor amendment proposed by Congress in 1924, the question has arisen as to whether that proposal, which has been ratified by some twenty-eight states, is still pending. In 1939, the Supreme Court was asked to rule on that question and after due deliberation decided that in the absence of a definite time limit a proposed amendment might be considered to be before the states for a reasonable period of time. The court refused to specify exactly how lengthy a period might be permitted, leaving it up to Congress to decide whether an amendment is still before the states for ratification.[15] In a Kentucky case the Supreme Court has decided that a state may ratify an amendment after having previously declined to take such an action.[16] On the other hand, no state may withdraw a

[13] The Eighteenth, Twentieth, and Twenty-first to be exact.
[14] 256 U. S. 368 (1921).
[15] See the case of *Coleman* v. *Miller*, 307 U. S. 433 (1939).
[16] See *Chandler* v. *Wise*, 307 U. S., 474 (1939).

favorable action after the Secretary of State has been notified.[17] In *Hawke* v. *Smith* (1920) [18] the Supreme Court considered the Ohio constitutional amendment which permitted the voters upon action by the state legislature to pass on a proposed amendment to the federal Constitution, thus controlling the action of the state legislature. It held that such a method was not contemplated by the Constitution and therefore could not be allowed. Advisory referendums, however, are a different matter and may be undertaken if they do not bind the legislature.

JUDICIAL INTERPRETATION

Marbury v. *Madison* [19] Although the Supreme Court did not play an outstanding role during the first years of its operation, it began during the early years of the nineteenth century to essay a more vigorous part in the government. Before President Adams left office he sent to the Senate the name of John Marshall as Chief Justice of the Supreme Court, which nomination the Senate confirmed as one of its last acts before Thomas Jefferson and his administration took over the government. Since the Supreme Court was made up of men who were from the opposite political camp, Jefferson made no bones of resenting the action of his predecessor in filling vacancies on the bench of the court.

When one of the Adams appointees to a minor justiceship of the peace applied to Jefferson's Secretary of State, James Madison, for his commission of office which had not been delivered, he received a very cold reception. Failing to obtain satisfaction from the new administration, Marbury, the appointee in question, appealed to the Supreme Court for assistance and, citing the Judiciary Act of 1789, asked for a writ of mandamus,[20] ordering Mr. Madison to turn over the commission. It appeared that the Supreme Court would have no choice other than to grant the petition of Mr. Marbury,

[17] Congress decided that New Jersey, New York, Ohio, Oregon, and Tennessee having ratified amendments could not change their minds. See also *Coleman* v. *Miller*, 307 U. S. 433 (1939).

[18] 253 U. S. 221 (1920).

[19] 1 Cranch 137 (1803).

[20] A writ of mandamus is a judicial order to an administrative officer to perform a specific act of a nondiscretionary nature. It permits no discretion on the part of that officer, but commands obedience.

yet President Jefferson let it be known that in such an event the mandamus would be ignored. Much to the surprise of the President and the general public, the Supreme Court did not issue such a writ, although it noted that Mr. Marbury was entitled to the commission. In comparing the Judiciary Act of 1789, which provided for such jurisdiction on the part of the Supreme Court, with the Constitution itself, the judges found a conflict, for Article III of the Constitution gave the Supreme Court original jurisdiction in only two types of cases: those involving foreign diplomatic officials and those in which the states were parties.

It was clear that the Marbury case did not belong to either of these categories and hence the Supreme Court declared null and void that section of the Judiciary Act which required it to take jurisdiction in such cases. Whether the judges were aware of what a far-reaching precedent they were establishing in making that decision or whether they were primarily concerned with saving their face in a most embarrassing conflict with Jefferson and his associates cannot be definitely determined. Perhaps both elements entered into their deliberations. At any rate the Marbury case has been considered the basis for the very important authority excercised by the Supreme Court in passing upon the validity of acts of Congress and interpreting the provisions of the original Constitution, although it is only fair to point out that the doctrine of judicial supremacy was not firmly established until a considerable time after this case had been decided.[21]

What Is Involved in Judicial Interpretation In lecturing at the Law School of Columbia University, Chief Justice Hughes, then governor of New York, made an observation which has been widely quoted. He said: "We are under the Constitution but the Constitution is what the judges say it is." [22] Taken out of its context this sentence sounds somewhat more categorical than Mr. Hughes probably intended. Nevertheless, it does summarize in a few striking words a procedure which has been of tremendous importance in adding to the American constitutional system. Something like one thousand cases are brought to the Supreme Court every year.

[21] It has sometimes been said that it required the Civil War to establish judicial supremacy as a vital part of the system of government in the United States.

[22] See Charles E. Hughes, *Addresses*, Harper & Brothers, New York, 1908, p. 139.

Many of these are relatively unimportant; in fact, the majority are not accepted by the Court for detailed consideration. However, during the course of the years the Supreme Court has received cases involving almost every conceivable aspect of the original Constitution and the formal amendments. In deciding these cases it is necessary for the Supreme Court to interpret the more or less general terms of the Constitution in a detailed and precise manner.

The Principle of Precedent If "the Constitution is what the judges say it is," it might be supposed that it would be a very meretricious affair indeed. One group of judges would decide one way; another would follow a very different course; and the result would be confusion. If the successive benches of judges who have constituted the Supreme Court decided cases on the basis of whim, there would, of course, be chaos rather than a system. Actually, however, they are guided by the principle of precedent to a considerable degree. In other words, they are mindful of their responsibilities and in interpreting clauses of the Constitution give careful consideration to previous cases involving similar points. At times the Supreme Court has been subjected to severe criticism because it has relied on precedent, and it is probably fair to say that such a policy has in some instances made progress difficult. On the other hand, unless considerable attention were paid to past interpretations, the work of the court would be very haphazard indeed. It would be inaccurate to speak of a constitutional system in the absence of precedents, for there would be little or no relation between interpretations of yesterday, today, and tomorrow.

Examples of Judicial Contributions to the Constitutional System The framers discussed the matter of giving the courts authority to interpret the Constitution, but there was considerable difference of opinion among them. No vote was taken on the matter and no provision was inserted which conferred such power. Nevertheless, it has frequently been said that the most significant characteristic of the governmental system of the United States is judicial supremacy, which grows out of the power of the Supreme Court to declare null and void acts of Congress or any other agency of government which it regards as conflicting with the terms of the Constitution. Hence, judicial supremacy itself may be regarded as an addition to the American constitutional system brought about not by formal provision or amendment, but by judicial interpreta-

tion. The very position of the states in the governmental system of the United States depends in no small measure upon judicial interpretation. Of course, the vastly greater complexity of economic and social problems has in the last analysis dictated the changes in state-federal relationships, but it has been judicial interpretation which has said exactly to what extent such changes should be reflected in the constitutional system.

CONGRESSIONAL STATUTES

Type of Statute During the course of a single year Congress transacts an enormous amount of business in the form of statutes, joint resolutions, and other types of acts. By no means all of these have any constitutional significance. The private bills, the appropriation measures, and the rank and file of statutes may call for the expenditure of large sums of money and affect the lives of millions of persons, but they are not of such a character as to contribute to the constitutional system. The relatively small number of statutes that do fall into this category are not distinguishable on their surface from the mass of ordinary legislation. They have the same general form and require only the ordinary majority of votes expected in the case of other acts. It is their contents that makes them important. How many statutes of this type have been enacted by Congress it is impossible to state, for no record is kept which separates these acts from ordinary acts. However, during the more than a century and a half of life of the republic the total number runs at least into the hundreds and probably into the thousands.

Examples of Statutory Change Inasmuch as the formal Constitution is very general in character, it is quite natural that Congress has had to enact many laws filling in the details. The Constitution in dealing with the judicial branch specifies a Supreme Court, but it leaves the creation of that court to Congress. The other federal courts are left entirely to the discretion of Congress, with the result that the entire system of district, circuit, and special courts stems from such a source rather than from the Constitution. In this day and age the administrative side of government is receiving emphasis the world over. It is interesting to note that the Constitution has no article which deals with administration; indeed, it scarcely refers to such activities at all. All of the nine traditional administrative departments of the national government

have been set up by statute. In addition, almost all of the independent establishments are the result of congressional action. The civil service system, the budgetary setup, and the planning and reporting agencies are all at least generally provided for by statute, although in matters of detail they may depend upon executive orders.

CUSTOMS AND USAGES

General Character Every government is likely to develop certain ways of handling public affairs which are not mentioned in any constitutional article or even in an ordinary law. The Anglo-Saxon countries, relying as they do on common law, which is based on custom and usage, perhaps give a place to more of these usages than do other countries. The government of England is traditionally associated by observers with a rich background of customs, frequently quite colorful in character. Although the United States is comparatively youthful in terms of English history, a large number of similar usages have developed in its government. Some of these are so unimportant that they have little bearing on the constitutional system, but some of them enter intimately into it.

Notable Examples Every student of American government recognizes the influential role which political parties assume; it is scarcely possible to conceive of the federal, state, or local governments in the absence of political organizations. Yet the Constitution makes no provision for political parties. There are a few laws which regulate party practices, but for the most part political parties have been the contribution of custom and usage.

Another example involves the cabinet which advises the President. There is no basis for this in the Constitution, and while congressional statutes have set up the departments from which the cabinet members are drawn, there is no authority there for the cabinet itself. The first Presidents found it useful to have a small group of advisers to whom they could look for counsel. Other Presidents have continued the custom, until it would require great daring to dispense entirely with such a body.

Custom and usage have had much to do with making the electoral college workable during these many years that political parties have nominated candidates for the presidency and vice-presidency. According to the arrangement in the Constitution, electors are given a free hand in electing a President; yet it is common

knowledge that electors are at present mere figureheads who cast their votes for the nominee of the political party which honored them. Custom and usage may therefore not only function in the absence of constitutional stipulation but may even operate to modify in a far-reaching manner a formal provision of the Constitution.

Still another illustration of the contribution of custom and usage involves the making of federal appointments. The framers decided to confer such a responsibility primarily upon the President, though they checked this power to some extent by requiring senatorial confirmation. The number of such positions has grown so large and the duties of the President have become so complicated that it is quite impossible for the President to take the initiative in the majority of cases. Through the years it has become the custom for the Senators and even the Representatives to recommend persons to the President, with the result that the executive offices have become to some extent merely an avenue along which appointments pass from their inception to their confirmation. This usage has achieved such strength that it has resulted in what is known as "senatorial courtesy"—unless the President consults a Senator belonging to his party from the state where the appointment is made, the Senate will refuse its confirmation.

Selected Bibliography

Allen, Florence E., *This Constitution of Ours,* G. P. Putnam's Sons, New York, 1940.

Annals of the American Academy of Political and Social Science, "The Constitution of the 20th Century," Vol. CLXXXV, entire issue of May, 1936.

Arneson, Ben A., *Elements of Constitutional Law,* Harper & Brothers, New York, 1928.

Beck, J. M., and James Truslow Adams, *The Constitution of the United States,* rev. ed., Doubleday, Doran & Company, New York, 1941.

Burdick, C. K., *The Law of the American Constitution,* G. P. Putnam's Sons, New York, 1922.

Carr, R. K., *The Supreme Court and Judicial Review,* Farrar & Rinehart, New York, 1942.

Corwin, E. S., *The Constitution and What It Means Today,* rev. ed., Princeton University Press, Princeton, 1946.

Cushman, Robert E., *Leading Constitutional Decisions*, rev. ed., F. S. Crofts & Co., New York, 1946.

Fenn, Percy T., *The Development of the Constitution*, Appleton-Century-Crofts, New York, 1948.

Hazlitt, Henry, *A New Constitution*, Whittlesey House (McGraw-Hill Book Company), New York, 1942.

Hehmeyer, A., *Time for Change; A Proposal for a Second Constitutional Convention*, Farrar & Rinehart, New York, 1943.

Levy, B. H., *Our Constitution; Tool or Testament*, Alfred A. Knopf, New York, 1941.

McLaughlin, A. C., *Constitutional History of the United States*, rev. ed., D. Appleton-Century Company, New York, 1935.

Mathews, J. M., *The American Constitutional System*, rev. ed., McGraw-Hill Book Company, New York, 1940.

Orfield, L. B., *Amending of the Federal Constitution*, University of Michigan, Ann Arbor, 1942.

Post, C. Gordon, Frances P. DeLancy, and Frederyc R. Darby, *Basic Constitutional Cases*, Oxford University Press, New York, 1948.

Read, Conyers, ed., *The Constitution Reconsidered*, Columbia University Press, New York, 1938.

Swisher, C. B., *American Constitutional Development*, Houghton Mifflin, Boston, 1943.

Willoughby, W. W., *Constitutional Law of the United States*, 3 vols., Baker, Voorhis & Co., New York, 1929.

Wright, B. F., *Growth of American Constitutional Law*, Reynal & Hitchcock, New York, 1942.

4 · *The Place of the States*

It has been said that the states have at present less exclusive power than ever before in their history and yet that they are more active than at any previous time. To a large extent the current energy displayed by the state governments may be attributed to the greatly enlarged role of government in general in the United States. Despite their reduced scope as far as exclusive powers are concerned, the states have during the last decade spent more money, employed more people, and carried on more varied functions than ever before.

Trend of Authority from the States to the National Government It is very difficult for students of the middle twentieth century to appreciate the enormous loyalty and distinctive pride which citizens displayed toward the states during the early years of the republic. Indeed for a number of years there was a widespread tendency to cling to the old sentimental attachment for one's state and to tolerate but scarcely admire the groping and somewhat unimpressive central government. As the national government displayed more and more vigor and proved than it was capable of handling difficult problems, the prestige of the states began to wane, at first more or less imperceptibly, but as time went on with increasing distinctness. The increasing complexity of the social and economic life of the nation, the ramifications of foreign relations, and the rapid growth of the population all contributed to the trend which transferred authority from the states to the nation. The Civil War decided the states' rights debate in favor of the union. During the 1930's, when the national government began to engage in virtually any function that it saw fit to undertake, it seemed to some students of government that the states had lost their very reason for existence.[1]

[1] See W. Y. Elliot, *The Need for Constitutional Reform*, Whittlesey House, McGraw-Hill Book Company, New York, 1935, Chap. 9.

Current and Future Role of the States Yet the states display great vitality. They may be unduly small in certain cases, lacking in authority, inadequately organized, and otherwise unsatisfactory, but they show surprising tenacity in maintaining their identity. The fact that many of them can look back over a long history militates against their abolition or radical reconstruction. Every indication points to their continued expenditure of vast sums of money and the employment of large numbers of persons. The national government will lay down the broad policies and have the final decision perhaps, but the state governments will be depended upon, as they are now, to carry out the details of the program. Moreover, it seems probable that the states will continue to exercise the primary responsibility in the important area of local affairs.

THE PROCESS OF ADMITTING STATES

Formal Requirements Under the Constitution Congress is given wide latitude in admitting new states so long as it does not disregard the prohibitions concerning the dividing or combining of existing states. The first step toward acquiring statehood is that of petitioning Congress for admission. The inhabitants of a territory may conduct a poll to indicate their sentiment or they may produce other good evidence of their desires. Congress may be impressed by a minimum of effort on the part of the territory, or again it may require many years of persuasion and repeated petitions before success is achieved; a great deal depends upon the times. If Congress approves of the proposed state, an enabling act is usually passed which authorizes the election of delegates to a convention for drafting a tentative constitution. After this constitution has been accepted by a majority of the voters in the territory, it goes to Congress for review. Congress may reject it altogether, accept it without change, or indicate that modifications will be necessary before approval can be given. Finally, after all conditions laid down by Congress have been met, a joint resolution admits the territory to statehood.

Status of Special Conditions Imposed by Congress Inasmuch as Congress has a free hand in prescribing conditions that must be satisfied before statehood will be conferred, a territory has no alternative but compliance with these demands, however unreasonable it may consider them to be. After Congress has acted favor-

ably and statehood has been granted, there is no possibility of subsequent revocation. Consequently, the newly admitted states sometimes disregard commitments which they were forced to make. When the conditions imposed by Congress would deprive a state of its political and legal equality as a part of the union, the Supreme Court has upheld the right of the states to ignore prerequisites for admission. Thus Oklahoma could move her capital in 1910 despite a provision in the enabling act which forbade such change prior to 1913.[2] However, if the change has to do with "contractual" rather than "political" matters, then the newly admitted state cannot escape so easily. In the case of Minnesota, public lands were given to the new state with the specific stipulation that proceeds therefrom should be used for educational purposes. After admission the demand for improved roads became insistent and hence it was decided that some of the revenue from land sales would be employed for road construction. The Supreme Court refused to permit this diversion on the ground that acceptance of the land by Minnesota carried with it a contractual obligation to use the proceeds for the purpose specified by Congress.[3]

Equality and Inequality of the States It has often been stated that the states are equal irrespective of the date of their admission. On a strictly legal basis this assertion is accurate, for all of the states have the same relative power in enacting legislation and in handling local problems. However, no one supposes that the states are equal in influence, in wealth, in population, in area, or in certain other respects. New York sends forty-five persons to the national House of Representatives, whereas Nevada, Wyoming, and several other states must content themselves with only one. Texas has an area of more than a quarter of a million square miles, while Rhode Island, with 1250 square miles, embraces less than 1 per cent as much territory. Not only is the aggregate wealth of Illinois far greater than that of Mississippi, say, but the per capita wealth of the former is all out of proportion to that of the latter. While, as has been pointed out previously, it is customary to think of the states once admitted as formally equal, actually that equality is largely a legal fiction. In most political relationships the large

[2] See *Coyle* v. *Smith*, 221 U. S. 559 (1911).
[3] See *Stearns* v. *Minnesota*, 179 U. S. 223 (1900).

and wealthy states have proportionately more power and influence than the small and less well-to-do ones.

The Question of Additional States There are indications that the number of states may sometime in the future increase to forty-nine, fifty, and even beyond that number. Hawaii has cast longing eyes on statehood for a number of years. She points out that she has a larger population than several states, that she pays more federal taxes than a number of states, and that she has maintained educational standards higher than those of certain states. After much fruitless activity Hawaii finally was authorized by Congress to poll the citizens of the territory on the question of statehood; this was done in 1940 and showed a definite desire for admission. The President has recommended the admission of Hawaii and Congress has taken steps in that direction. In the case of Puerto Rico a pledge of eventual statehood has been given, but there is some question whether the majority of residents of that territory would regard such a grant as a satisfactory substitute for independence. Alaska has been viewed by some observers as the most deserving candidate because of the white character and common culture of its population, but the small number of residents militates against immediate statehood. There is some discussion of further subdivision within the continental territory of the nation, but the probability of any immediate action is not great.

LIMITATIONS IMPOSED UPON THE STATES BY THE CONSTITUTION

In general, the states have all powers which are not expressly conferred on the national government or reserved to the people. Nevertheless, the framers felt it wise to lay down certain limitations on the exercise of those powers.[4]

Restrictions upon the Taxing Power The states under the Articles of Confederation had enjoyed the taxing power in its totality, while the central government had had to beg for the morsels that fell from the states' tables. The new Constitution remedied the weakness by giving the national government the direct authority to levy taxes, but it also left the power of the states in the tax field more or less unimpaired. It did, however, lay down several specific prohibitions or restrictions, while the Supreme Court

[4] See Chap. 7 for a discussion of some of these limitations.

has read others into it. The framers inserted a clause which forbade any state, without the consent of Congress, to lay "any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." [5] In this same category may also be mentioned a prohibition relating to the levying of tonnage duties.[6] The due process clause of the Fourteenth Amendment which commands a state not to deprive anyone of "life, liberty, or property without due process of law" has sometimes been applied by the courts in such a manner as to limit the taxing power of states. The contract and the equal protection clauses of the Constitution have also at times been interpreted in such a way as to limit the taxing powers of states. While the Constitution contains no specific prohibition of state taxation of federal instrumentalities, the Supreme Court decided at an early date in the history of the republic that this was implied.[7] The court declared that it would cause endless trouble if the states were permitted to hamper the federal government by levying taxes. This general rule continues to apply. States are not permitted to tax the property of the national government, unless specific consent is given.

Restrictions upon the Power to Regulate Commerce The authority to regulate interstate and foreign commerce is expressly given to the national government, leaving intrastate regulation to the states. As long as manufacturing, mining, agriculture, and lumbering, as well as local distribution, were included under intrastate commerce, the states had considerable regulatory authority. When during the 1930's the first four of these were partially transferred to the interstate classification, the role of the states was greatly reduced.

Foreign and Interstate Relations "No state shall enter into any treaty, alliance, or confederation . . . No state shall, without the consent of Congress, enter into any agreement or compact with another state or with a foreign power." [8] This constitutional provision has effectively eliminated treaties between the states and

[5] Art. I, sec. 10.
[6] Art. I, sec. 10. The consent of Congress may justify tonnage duties, but this is not given.
[7] See *McCulloch* v. *Maryland*, 4 Wheaton 313 (1819) and *Collector* v. *Day*, 11 Wallace 113 (1871).
[8] Art. I, sec. 10.

foreign countries and concentrated such authority in the central government. However, agreements or compacts with other states in the United States are another matter. In this day of rapid transportation and interdependence the states are constantly being confronted with problems that involve sister states. Many of these issues are comparatively minor and may be adjusted by correspondence or personal conferences between officials of two states. Ordinarily only formal agreements and compacts are brought to the attention of Congress and there has been a tendency to carry only compacts involving several states to Washington for approval.

Military Affairs States cannot without the consent of Congress "keep troops or ships of war in time of peace" "or engage in war, unless actually invaded or in such imminent danger as will not admit of delay." [9] Congress has, of course, made provision for the National Guard and in a few instances has permitted the operation of unimportant vessels of at least a semimilitary character. As for engaging in war, the states seem to be glad to have the national government assume that responsibility.

The Monetary System "No state shall coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts." [10] The second part of the limitation was more or less avoided during the years prior to the Civil War by permitting state banks to issue notes and scrip which served substantially the same purpose as state bills of credit. The abuses in connection with this practice together with the desire of Congress to foster a strong system of national banks led in 1866 to legislation taxing out of existence notes issued by state banks.[11]

Impairing the Obligation of Contracts Finally, there is the important clause in the Constitution which reads: "No state shall pass any law impairing the obligation of contracts." [12] As far back as 1819 the Supreme Court examined this limitation in deciding the famous Dartmouth College case.[13] Citing the contract clause the Supreme Court declared that New Hampshire could not legally take over the college, for the donors of the original funds had

[9] Art. I, sec. 10.
[10] Art. I, sec. 10.
[11] Upheld by the Supreme Court in *Veazie Bank* v. *Fenno*, 8 Wallace 533 (1869).
[12] Art. I, sec. 10.
[13] *Dartmouth College* v. *Woodward* is reported in 4 Wheaton 518 (1819).

entered into a contract which was recognized by the English crown when a charter was granted. Some years later the court modified the sweeping character of the Dartmouth College case to some extent by laying down the principle that states are not bound by implied terms of a contract.[14] Although the contract clause is still used by the courts to prevent state action, it is a less serious hindrance than might be imagined. The states ordinarily now protect themselves by inserting provisions in charters for revocation.

Selected Bibliography

Bates, F. G., and O. P. Field, *State Government*, rev. ed., Harper & Brothers, New York, 1939, Chaps. 1-2.

Beck, J. M, *The Vanishing Rights of the States*, George H. Doran Company, New York, 1926.

Beman, L. T., ed., *Selected Articles on States Rights*, George H. Doran Company, New York, 1926.

Bromage, A. W., *State Government and Administration in the United States*, Harper & Brothers, New York, 1936, Chap. 3.

Graves, W. Brooke, *American State Government*, rev. ed., D. C. Heath & Company, Boston, 1946, Chaps. 1-2.

Macdonald, A. F., *American State Government and Administration*, rev. ed., The Thomas Y. Crowell Company, New York, 1945, Chap. 2.

Odum, H. W., and H. E. Moore, *American Regionalism*, Henry Holt & Company, New York, 1938.

Patterson, E. M., ed., "Federal versus State Jurisdiction in American Life," *Annals of the American Academy of Political and Social Science*, Vol. CXXIX, pp. 1-167, January, 1927.

Warren, Charles, *The Supreme Court and the Sovereign States*, Princeton University Press, Princeton, 1924.

Willoughby, W. W., *Constitutional Law of the United States*, rev. ed., 3 vols., Baker, Voorhis & Company, New York, 1929, Vol. I, Chaps. 11-16.

Wright, B. F., *The Contract Clause of the Constitution*, Harvard University Press, Cambridge, 1938.

[14] See *Charles River Bridge* v. *Warren Bridge*, 11 Peters 420 (1837).

5 · *Federal-State and Interstate Relations*

TECHNIQUES OF FEDERAL CONTROL OVER STATES

Actual Assumption of State Functions The most obvious method which the national government has employed in invading the domain of the states has been the actual taking over of state functions. Certain areas which were at one time local in character have been carried over into the realm of interstate commerce as a result of the striking economic developments of the last century. Naturally, therefore, the national government has taken over jurisdiction in important matters which were once left to the states. Still the extent to which the national government has actually taken over the exercise of state functions is frequently exaggerated. The expansion of the Federal Bureau of Investigation in the early thirties represents an action of this type. Likewise, the establishment of a nation-wide old-age annuity system represents an invasion of an area once associated with the states. Also, the fixing of minimum wages and maximum hours is another case in which federal authorities have entered a field of former state dominance; yet here again action has been limited to certain employers whose business is carried on in more than a single state.

Grants-in-Aid More important than the direct assumption of state powers has been the system of grants-in-aid which the national government has devised. Congress for various reasons has not seen fit to substitute direct federal for state control;[1] rather it has preferred to set up certain standards and policies which it regarded as desirable. Then, it has appropriated large sums of money which might be granted to states that saw fit to meet the specified stand-

[1] There was long the question of Supreme Court approval. Local sensitiveness also entered in. All in all, it was simpler to use an indirect technique.

ards. Usually, though not always, the grants are made on a fifty-fifty basis, that is, each co-operating state must add an equal amount to what it is permitted to draw from the national treasury. In highway construction, in payments to aged dependents, aid to dependent children, pensions for the blind, vocational education, and a number of other fields, the national government has preferred to use the grant-in-aid technique rather than to assume direct control. All in all, this method has achieved very substantial results in those fields in which it has been used.[2]

Objections to the Grant-in-Aid Technique There has been sharp criticism of the grant-in-aid technique by some of those who have opposed the invasion of state powers by the federal authorities. Such a method has been characterized as "undemocratic," "perverting in its influence," "backdoor" or "backstairs," and a "violation of the spirit, if not the letter, of the Constitution." The strict constructionists quite naturally regard with extreme disfavor a method which permits a more powerful central government without formal amendment of the Constitution or even the use of the doctrine of implication by the Supreme Court. Likewise, it has been criticized by prosperous states because it means that the federal taxes their citizens pay are used in poorer states for what they call "local" purposes. Finally, it is maintained by some critics that such a method is violently unfair because it capitalizes on the popular sentiment of "something for nothing."

Use of State Officials Occasionally the national government has used either the states or state officials as agents. In the Selective Service Act of 1940 state governors are permitted to name the local boards which pass on the individual cases of those who are called for military training. In connection with the choice of presidential electors, Senators, and Representatives, state election officials are charged with certain duties and may be held to account in federal courts for violations of the requirements laid down by the national government.[3]

[2] Many public buildings have been constructed with federal aid. See J. F. Isakoff, *The Public Works Administration*, University of Illinois Press, Urbana, 1938.

[3] See *Ex Parte Siebold*, 100 U. S. 371 (1880). In *Newberry* v. *U. S.*, 256 U. S. 232 (1920) primary elections were held not under federal control, but this was reversed in *United States* v. *Classic*, 313 U. S. 299 (1941).

Federal Research Many of the administrative agencies of the national government carry on extensive research programs which are of interest to state as well as to federal authorities. There is a considerable difference of opinion about the extent to which the findings of federal research workers influence the action of state agencies and their related local governments. It is doubtless safe to say that less attention is given these conclusions than they warrant; on the other hand there is evidence that they exert a considerable influence in certain cases.

State-federal Collaboration Finally, the role of the national government has been extended in a minor degree by collaboration which the states may seek. A state may request the assistance of federal forces in connection with labor troubles, floods, and other emergencies. In coping with insect pests, human epidemics, and animal diseases, federal experts sometimes come to the scene at the invitation of state officials. Somewhat different but falling into the same category was Secretary of State Cordell Hull's communication to the forty-eight state governors in 1940 in which he appealed for state collaboration in doing away with state practices which constituted barriers against unfettered interstate trade.[4]

RESPONSIBILITIES OF THE NATIONAL GOVERNMENT TO THE STATES

Protection against Invasion or Domestic Disturbance The Constitution specifically requires the national government to protect the states through the use of its military arm: ". . . and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."[5] The constitutional charge on the national government to protect state territory against foreign invasion is, of course, a more or less obvious responsibility—it is impossible to conceive of the national government voluntarily permitting a foreign power to invade its territory, especially when that territory is part of a state. The second part of this obligation is somewhat more meaningful, since it is a common responsibility of both the national and the state governments to suppress domestic

[4] In the guise of the police power states have erected barriers shutting out milk, trucks, and so forth from other states.

[5] Art. IV, sec. 4.

disruptions throughout the land. In those cases where violence and internal disturbances reach such proportions that a state is itself unable to cope with the situation, federal forces are, therefore, guaranteed by the Constitution if state officials request such assistance. Except in very unusual circumstances state police facilities are now adequate to handle labor troubles, race riots, and other serious fracases; consequently it is uncommon for states to ask for federal aid. In this connection it may be noted that the federal authorities, alleging the primacy of federal property or rights, sometimes wish to take a hand when the state officials refuse to ask for assistance. Thus it would seem that federal assistance is available not only in those rare instances when a state desires it but also when it does not ask for and even opposes such intervention. Military forces may not be frequently sent into a state in these days, but the "G-men" are likely to congregate in cities or states in which the local authorities fail to keep crime within reasonable limits.

A Republican Form of Government Under the terms of the Constitution the national government guarantees a republican form of government to the states.[6] This clause reads very well, but an examination of the facts reveals that it sometimes has comparatively little meaning in practice. That is not to say that it does not have a good moral effect or that it might not be invoked if any widespread movement away from republican forms developed among the states. The trouble is that no adequate machinery is set up to enforce such a guarantee during ordinary times. The Supreme Court has repeatedly ruled that it is not for the courts to attempt to exercise such a function which, they say, falls under the political rather than the judicial category.[7] Hence it is left up to Congress and the President to see that the states do have republican governments. The President, however, has numerous other duties to occupy his attention; moreover, it would frequently be very unwise from a political standpoint for him to inquire too closely into the actual operation of the government of a certain state. Congress has the authority to refuse seats to Senators and Representatives of

[6] Art. IV, sec. 4.

[7] Perhaps the best statement of the Supreme Court on this question is to be found in *Pacific States Telephone and Telegraph Co.* v. *Oregon*, 223 U. S. 118 (1912). See also *Luther* v. *Borden*, 7 Howard 1 (1849); and *Mountain Timber Co.* v. *Washington*, 243 U. S. 219 (1917).

states that disregard republican principles and may also withhold federal appropriations from such states. But there is a wide chasm between the power to do something and the actual use of that power. If seats were refused or appropriations withheld, a great hue and cry would doubtless be raised. Moreover, the individual Senators and Representatives are very reluctant to establish a precedent that might sometime be embarrassing to their own positions or states. Hence the Huey Longs, the Matt Quays, the D. C. Stephensons, and their boss colleagues are given a free hand in scuttling the republican institutions of the states in which they operate.

Territorial Integrity The framers of the Constitution were fearful that territory of their states might be alienated by the national government. Therefore, they inserted clauses which they believed would serve to prevent such action. Territory may not be taken from a state without its specific consent;[8] a state cannot be divided up into two or more states unless it agrees to such action; two or more states shall not be joined together to form a single state unless they so desire.

OBLIGATIONS OF THE STATES TO SISTER STATES

Full Faith and Credit The Constitution commands the states to give "full faith and credit" to "public acts, records, and judicial proceedings of every other state."[9] If every state clung churlishly to its own minute forms and persistently refused to recognize records and acts of other states which did not have exactly the same requirements, there would be great confusion, inconvenience, and loss of time. To obviate such chaos the framers agreed upon a provision which orders every state to accept at full value the acts, public records, and court proceedings of all other states. On its face, this stipulation would seem to apply to both civil and criminal cases, but the Supreme Court has decided that only civil matters are involved.[10] Under the full-faith-and-credit clause states must give full recognition to the deeds, mortgages, notes, wills, contracts, and similar instruments of sister states as long as these have met all the requirements of the state where they originated.

[8] Art. IV, sec. 3. This does not prevent the national government from taking limited areas for post offices and forts by eminent domain.

[9] Art. IV, sec. 1.

[10] See *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265 (1888).

Divorce The full-faith-and-credit clause has presented many difficulties in connection with divorce decrees. The states vary as widely in their divorce laws as perhaps in any other field. Where the state of the married domicile [11] grants a divorce, every other state must accept the divorce without a question. However, if the state which dissolves the contract of marriage is not the actual married domicile but a state to which the parties have gone for the purpose of securing such a release, that divorce may be accepted by other states, but there is *no obligation* in the matter.[12]

Extradition or Rendition To assist in the apprehension of criminals the framers of the Constitution inserted a declaration that states should surrender to sister states fugitives from justice. This process, sometimes known as "rendition" but more often as "extradition," frequently serves a very useful purpose in preventing criminals from escaping punishment. The Constitution permits the states no discretion, reading, "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." [13]

Recognition of Citizenship Finally, the states are required by the Constitution to extend recognition to the citizens of other states within their borders, for "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." [14] This requirement is not so clear and definite as it might be and during recent years has been variously juggled about to permit some degree of local favoritism. It does not, of course, confer the privilege of voting. In general, it does mean that freedom of

[11] In 1945 in deciding the second Williams case the Supreme Court held that the state of the married domicile is the state in which the parties have normally lived. If the two parties go to another state in order to obtain a divorce they engage in a fraud which does not have to be recognized by their home state. See *Williams* v. *North Carolina*, 325 U. S. 226 (1945).

[12] *Haddock* v. *Haddock*, 201 U. S. 562 (1906) was overruled by the Supreme Court in the first Williams case. See *Williams* (*and Hendrix*) v. *North Carolina*, 317 U. S. 287 (1942). But the second Williams case saw the Supreme Court more or less back to its earlier position. See *Williams* v. *North Carolina*, 325 U. S. 226 (1945).

[13] Art. IV, sec. 2.

[14] Art. IV, sec. 2.

movement is permitted,[15] although several states have under one guise and another attempted to circumscribe this.

OTHER INTERSTATE RELATIONS

Interstate Compacts Where some very important matter arises which calls for agreement on the part of several states, it is the custom to seek the consent of Congress.[16] As state relations become more complicated, the necessity for interstate compacts becomes greater—thus a large part of the more than eighty compacts approved by Congress are fairly recent.[17] The earlier compacts dealt with such matters as boundary disputes, jurisdiction over rivers and harbors, and criminal jurisdiction; the more recent ones have had to do with the use of river water and electric power generated from such water, oil production, fishing in a river or lake, large-scale pollution, and the establishment of regional educational institutions.[18]

Commissions on Interstate Co-operation The problem of interstate relations has become so complex and so recurring that there has been a widespread movement to set up commissions on interstate co-operation. These commissions represent their states on the Council of State Governments [19] and also undertake to conduct direct negotiations with other states. As members of the Council of State Governments they work toward better relations and closer harmony among their states and serve as a clearinghouse of what is being done in regard to current problems. As negotiating

[15] This decision was made in the case of *Edwards* v. *California*, 314 U. S. 160 (1941) commonly known as the "Okie Case." Professor A. N. Holcombe in an address to the American Political Science Association in December, 1941, characterized it as one of the most important decisions of a century and a half.

[16] See W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, pp. 650-651. Out of some 80 interstate agreements drawn up prior to 1932, 62 were brought to Congress and about 20 were not.

[17] See *State Government*, Vol. IX, pp. 118-121, May, 1936. Twenty-four compacts were authorized by Congress during the years 1934-1940. See the *Book of the States, 1941-1942*, Council of State Governments and American Legislators' Association, Chicago, 1941, pp. 56ff.

[18] For a complete list, see *Book of the States 1945-1946*. A parolee compact has been ratified by thirty-eight states while others have not as yet been ratified by a single state.

[19] A part of the Public Administration Clearing House in Chicago, which is supported jointly by the state governments and the Rockefeller Foundation.

agents they represent their states during the drafting of a compact; they also attempt to iron out less important and permanent difficulties with neighboring states.

Selected Bibliography

Anderson, William, *Federalism and Intergovernmental Relations*, Public Administration Service, Chicago, 1946.

Ball, C. R., *Federal, State, and Local Administrative Relationships in Agriculture*, 2 vols., University of California Press, Berkeley, 1938.

Baum, R. D., *The Federal Power Commission and State Utility Regulation*, American Council on Public Affairs, Washington, 1942.

Benson, G. S. C., *The New Centralization; A Study of Intergovernmental Relationships in the United States*, Farrar & Rinehart, New York, 1941.

Bitterman, H. J., *State and Federal Grants-in-Aid*, Mentzer, Bush & Company, Chicago, 1938.

Clark, Jane Perry, *The Rise of a New Federalism; Federal-State Coordination in the United States*, Columbia University Press, New York, 1938.

Fite, E. D., *Government by Cooperation*, The Macmillan Company, New York, 1932.

Graves, W. Brooke, *Uniform State Action*, University of North Carolina Press, Chapel Hill, 1934.

—, ed., "Intergovernmental Relations in the United States," *Annals of the American Academy of Political and Social Science*, Vol. CCVII, pp. 1-218, January, 1940.

Heinberg, J. G., *Manual on Federal-State Relations for the Missouri Constitutional Convention of 1943*, author, Columbia, 1943.

Kallenbach, J. E., *Federal Cooperation with the States under the Commerce Clause*, University of Michigan, Ann Arbor, 1942.

Key, V. O., Jr., *The Administration of Federal Grants to the States*, Public Administration Service, Chicago, 1937.

Macdonald, A. F., *Federal Aid: A Study of the American Subsidy System*, The Thomas Y. Crowell Company, New York, 1928.

Medder, F. E., *State and Local Barriers to Interstate Commerce in the United States*, University of Maine Press, Orono, 1937.

Patterson, E. M., ed., "Federal versus State Jurisdiction in American Life," *Annals of the American Academy of Political and Social Science*, Vol. CXXIX, pp. 1-167, January, 1927.

Powell, A. L., *National Taxation of State Instrumentalities*, University of Illinois Press, Urbana, 1936.

Trade Barriers among the States, Council of State Governments, Chicago, 1939.

6 · *Citizenship*

Nature of Citizenship in the United States All modern governments make a distinction between citizens and aliens; in the case of the United States there is paradoxically both more and less difference between citizens and noncitizens than in most other countries. The fact that aliens are treated with more than ordinary consideration, at least by our laws,[1] that they are given the full protection of those laws, that they may usually hold property and engage in business enterprise without discrimination, means that the actual day-to-day status of aliens is not so very different from that of citizens.[2] On the other hand, the very nature of our political system makes citizenship tremendously important. In a totalitarian government in which the dictator decides what shall be done and proceeds to carry his decisions into effect, the role of citizens may be scarcely different from that of other residents. In every case it is expected that obedience will be the rule, that financial support will be given, and that every man will do the minute task assigned to him. Under the American system the very success of the political process depends in very large measure upon the citizens. It is they who elect the public officials; it is they who express themselves directly or indirectly upon current issues; it is they who formulate certain standards which will either make for superior government or tolerate the most vicious of machine practices.

A Definition of Citizenship Strangely enough, the men who drafted the original Constitution apparently did not regard it as

[1] The attitude of our laws must in some cases be distinguished from the attitude of the population. The laws with few exceptions treat aliens as almost on the same plane as citizens; popular treatment may be, and sometimes is, far less courteous.

[2] This is the case during normal times; during wartime, enemy aliens, of course, may be in a very different category. National laws in force in 1942 did not permit any aliens to be employed in specified defense industries.

part of their duty to provide a definition of citizenship or indeed even to specify exactly who were citizens, although they used the term seven times. It was not until the Fourteenth Amendment was added that any authoritative definition was made and even it was in general terms and brief form. By this amendment, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." [3] It will be noted that two types of citizenship are specified: national and state. State citizenship follows national citizenship automatically though a residence of from six months to two years, depending upon the state, is required before certain political privileges are permitted. While voting, office-holding, and jury service depend upon state citizenship, still it is currently held in far less esteem than was the case a century or more ago, when it was commonplace for Americans to think first of their relation to Virginia or Massachusetts and only secondarily of their relation to the whole country. Of course, there may still be some who are so sentimentally attached to the states in which they were born and in which they have always lived that for them the state comes first, but in the vast majority of cases it is national citizenship which is thought of when the term is mentioned.

THE ACQUISITION OF CITIZENSHIP

Out of approximately 132,000,000 people who resided in the continental United States when the census of 1940 was taken, something like 127,000,000 were citizens. These teeming millions of people of varied racial backgrounds, different economic status, and diverse social classes obtained their citizenship in one of three ways: (1) by birth in the United States subject to the jurisdiction thereof, (2) by birth to American citizens residing abroad, and (3) through the process of naturalization.

Citizenship by Birth in the United States By far the most common method of obtaining American citizenship is that which involves birth in the United States. Now that the streams of migrants from Europe are no longer pouring into the country, the American-born section of the populace is making rapid strides toward exclusive occupancy. It may be noted that the Fourteenth Amendment specifies not only birth in the United States but birth

[3] This is to be found in section 1 of the Fourteenth Amendment.

subject to the jurisdiction of our government. This is of no practical numerical importance, but it was inserted lest there be a conflict with international law which exempts children born to diplomats stationed abroad from citizenship in the country of birth. With minor exceptions, all of those born within the continental United States are citizens.[4] Birth in a territory of the United States, however, may or may not carry with it United States citizenship. If territories have been incorporated or if Congress has provided by treaty or law that their inhabitants shall be entitled to the privilege, then citizenship does accompany birth. However, in other territories American citizenship is not acquired by birth.

Citizenship by Birth to American Parents Abroad During normal times fairly large numbers of American citizens reside in China, Argentina, France, Italy, and other countries for business purposes, for pleasure, for education, or for missionary endeavor. Although these citizens may spend most of their mature years outside of the United States, they are not willing to surrender their citizenship; indeed some of them conduct their lives more strictly in conformity with American customs than do those at home. If children are born to these persons, the laws of the United States permit them to hold the citizenship of their parents. It is customary to register such births at the nearest consulate of the United States at once, although formal notification of intention to retain American citizenship is not required until the age of eighteen has been reached. Then at twenty-one the oath of allegiance must be taken. Persons in this class remain citizens throughout their lives, even if they do not ever live in this country, but they cannot transmit citizenship to their children unless they spend some time here.

Citizenship through Naturalization The third method of obtaining citizenship in the United States is naturalization. In the days when the United States was expanding her territorial possessions and particularly during those years when hundreds of thousands of Europeans came annually to take up permanent American residence, naturalization was responsible for the addition of numer-

[4] Prior to 1924 Indians also constituted an exception to the general rule if they were members of tribes and born on Indian reservations. In that year Congress passed an act which conferred citizenship on the third of the Indian population which lacked such status.

ous citizens. Even during recent years, especially during World War II, naturalization has been reasonably important as a means of transferring the citizenship of those born in foreign countries. There are three types of naturalization: (1) by judicial process, (2) by treaty, and (3) by congressional statute. The first of these so much transcends the other two in importance that the term "naturalization" commonly implies only the former method. Nevertheless, the second and third deserve a brief explanation.

Naturalization by Treaty In acquiring territory which has been held by a foreign country it is customary to draw up a treaty specifying the exact terms of the transfer. Such a treaty may contain a clause that confers American citizenship on the inhabitants of the territory or, on the other hand, it may make no reference to that matter. The treaty which the United States made with Russia after the purchase of Alaska may be cited as an example of this form of naturalization.

Naturalization by Congressional Statute Occasionally Congress has naturalized fairly large numbers of persons by ordinary statute. After the successful conclusion of World War I, for example, a law was passed which provided that all aliens who had served in the military forces of the United States might claim citizenship if they liked. In those cases in which territories have been added without conferring citizenship on the inhabitants, it may later seem wise to Congress to grant citizenship. The residents of the Virgin Islands and Puerto Rico and noncitizenship Indians received citizenship in this manner.

Naturalization by Judicial Process In contrast to the group character of naturalization by treaty or by statutory action, naturalization by judicial process is an individual affair. That is to say that each case is handled on its own merits, involves its own application, and receives an individual certificate indicating that citizenship has been granted. As early as 1790, Congress enacted legislation relating to individual naturalization and placed the general jurisdiction in the matter under the courts. When the population was very small and the policy was to recruit as many citizens as possible, the regulations covering the process were naturally not very strict. However, although many irregularities were noted and although there was some sentiment for greater safeguards, the easy procedure was permitted to continue with minor changes long

after that stage had been passed. The abuses became so flagrant that President Theodore Roosevelt finally appointed a commission to investigate the whole matter and to make recommendations for reform. This committee did its work well and fostered the act of 1906 which with amendments remains in effect today.

Steps in the Naturalization Process At present there are three stages which candidates for naturalization must pass through: (1) declaration of intention, (2) petition for citizenship, and (3) the granting of papers. These are supervised by the Bureau of Immigration and Naturalization, which is a subdivision of the Department of Justice. But they are directly administered by some 260 federal and 1,700 state courts.[5]

Declaration of Intention Those persons who are eligible for citizenship may go to a federal court or to a state court of record [6] under whose jurisdiction they live and declare their purpose of becoming citizens of the United States. They must be at least eighteen years of age. No specific residence is required except that they must have lived in a place long enough to come under the jurisdiction of its courts—a matter of six months or a year. This first step really amounts to little more than a visit to the clerk of the court, filling out and signing papers, and paying a fee. Personal history is called for, along with a statement that the applicant intends to forswear allegiance to the foreign country of which he is a citizen—but the actual denouncing of such allegiance is not demanded until the oath of allegiance to the United States is taken during the final stage.

Petition for Citizenship After at least two but not more than ten years have elapsed since the first step and provided the applicant can show five years of continuous residence in the United States, the second step is in order. The candidate must betake himself to a court designated for the purpose—any federal district or circuit court of appeals is always approved and certain state courts may be accepted; in many cases this court is the same one to which he went in declaring his intention. As in the first stage, he goes to the clerk of the court rather than to the judge and again he fur-

[5] Naturalization certificates have recently been granted as follows 1936, 141,215; 1942, 270,364; 1943, 317,508, including 36,049 military cases; 1946, 150,062.

[6] All state courts above the lowest grade are courts of record. In justice of the peace courts there is usually no clerk and no detailed record.

nishes certain information on blanks which are provided. He has to show that he has had five years of residence, that he is not a polygamist or an anarchist, that he is self-supporting, and that he expects to remain permanently in the United States. The candidate must also furnish affidavits from two citizens of the United States who are in a position to offer testimony in regard to his length of residence and moral character. Also, another fee must be paid.[7]

Granting of Citizenship At the conclusion of the second step the agents of the Bureau of Immigration and Naturalization conduct more or less searching investigations into the record and character of the applicant. The federal agents check on length of residence, moral character, political stability, and economic independence and report on such findings to the court which has jurisdiction. After at least thirty days have elapsed since completion of the second step and provided a general election is not scheduled within sixty days, the final stage may be negotiated. Here for the first time the candidate appears before a judge in open court—usually along with a number of other applicants. At this time the representatives of the Bureau of Immigration and Naturalization may present evidence against the candidate and ask that citizenship be denied. If the report of this Bureau is not entirely favorable, the applicant must be accompanied by two citizens who are able to testify as to his qualifications. The judge exercises considerable discretion in conducting the hearing, for no set form is prescribed by law.[8] If there is any question about the qualifications of the candidate, the judge will usually put a number of searching questions to the person involved; otherwise the hearing may be quite perfunctory.

Ceremonies in Granting Citizenship Some judges like to stage quite a show in connection with the examination of candidates. They ask for the singing of the *Star Spangled Banner*, require the flag salute, and deliver a stirring address of patriotic character. Not infrequently questions which produce strange answers are asked involving the history of the United States. If the judge is

[7] Fees have varied from time to time. Prior to 1934 they totaled some $35, but they have since been reduced considerably below that figure.

[8] For a very useful compilation of laws relating to naturalization, see *Naturalization, Citizenship, and Expatriation Laws; Naturalization Regulations*, prepared by the Bureau of Immigration and Naturalization, Government Printing Office, Washington, 1934.

satisfied with the results of the hearing, he orders the clerk of the court to furnish a certificate of citizenship or final papers to the applicant. If, on the other hand, the results are not satisfactory, the judge may deny the petition entirely or he may defer the granting of final papers.

Defects in the Naturalization Process Despite the improvements brought about by the Act of 1906 and by amendments which have been added to it from time to time, there is some disposition to regard the process of judicial naturalization as not entirely satisfactory. It is asserted that too much leeway is permitted judges in the final step; that some judges take the matter seriously while others give it only the most perfunctory attention; that all too often the public hearing becomes simply an occasion for histrionic display on the part of the judge; that the investigation is superficial and has little bearing on the capacity which the candidate actually has for American citizenship. In truth, there is considerable evidence to support these contentions. Some judges do attempt to exercise their duties with care, but political judges sometimes treat the process as more or less of a farce. Considering the importance of citizenship in the United States, it does not seem that enough is made of the occasion afforded by the granting of the final papers. Perhaps a formal ritual would be out of place, but the average court session at present is so lacking in impressiveness that newly made citizens frequently go away without the sense of loyalty and responsibility which they should have. Finally, insisting upon technicalities[9] while at the same time ignoring principles is an unfortunate misplacement of emphasis. One wonders what difference it makes whether or not a candidate can quote verbatim the Declaration of Independence or the words of the national anthem. Certainly, far more significant is his understanding of the fundamentals of the American system of government.

Loss of Citizenship Unlike some countries which refuse to sanction the discard of one citizenship to acquire another,[10] the

[9] For many years candidates for citizenship had to state that they would "take up arms in defense of the United States" irrespective of age or sex. However, in 1946 the Supreme Court reversed itself and declared that Congress did not intend such a qualification since it did not specifically stipulate this condition in the various naturalization acts.

[10] France, Italy, and so forth, for example.

United States definitely permits such a course. No formal steps have to be taken to abandon citizenship in the United States, for the mere acceptance of citizenship in another country serves to sever relationship with the United States. If naturalized citizens move permanently to a foreign country within five years after they have been naturalized, the Bureau of Immigration and Naturalization may ask the courts to declare the original grant invalid.[11] A number of persons have been de-naturalized on the basis of fraud in obtaining citizenship. Followers of the Nazi cult have been the chief objects of recent de-naturalization proceedings.

Marriage and Citizenship Marriage does not, of course, have any effect upon the citizenship of males in any country, but for women the general rule is that upon entering such a relationship they automatically assume the citizenship of their husbands. This is the uniform practice in almost every country at present, despite vigorous campaigning carried on by certain feminist groups. However, in the United States the efforts of organized women began to bear fruit as early as 1922. Further ground was gained in 1930 and 1931, and a final victory was apparently won in 1934. After more than a century of identical citizenship for husband and wife large numbers of women in the United States began to feel that there was unfair discrimination in laws which made it necessary for them to follow their husbands' citizenship.

Problem of Dual Citizenship and Statelessness At the present time American women who marry foreigners usually find themselves in the confusing position of having two citizenships. The law of their husband's country claims them for its own, while the American law permits them to remain citizens of the United States. This leads to considerable trouble in settling estates, in arranging divorce settlements, and in other cases involving property because there is almost bound to be a conflict between the laws of the foreign country and those of the United States. Foreign women marrying American men have even greater worries than American women in the converse situation, for they are literally without a country; their native land no longer claims them nor does the United States.

[11] For a detailed treatment of loss of citizenship, see L. Gettys, *The Law of Citizenship in the United States*, University of Chicago Press, Chicago, 1934, Chap. 7.

Their wisest course is to proceed with naturalization, which, although shortened in their cases, still requires some delay.[12]

NONCITIZENS

Place of Aliens in the United States Perhaps no modern country has profited more than the United States from the migrations of aliens. At times it has been popular to blame these noncitizens for our high crime rate, our political corruption, and other unpleasant aspects of American life. There is, however, considerable doubt that these aspersions have been well founded;[13] on the other hand, one cannot question the tremendous debt we owe to those who pulled up their stakes in foreign lands and settled permanently here. Millions of immigrants have poured in—first from England, Germany, Ireland, and the Scandinavian countries and more recently from Italy and the southern and eastern European countries. Sometimes more than a million have entered our harbors within a single year.[14] Many of these aliens have established themselves in Little Italies, Little Polands, and Little Russias in the congested areas of large cities, where they have maintained their foreign psychology and their native culture. However, a very large majority have amalgamated with the general population to the point of becoming an integral part of it. Ordinarily the latter have gone through the naturalization process and taken their places as citizens of the country.

Alien Registration After long discussion it was finally decided that it would be desirable to require aliens in the United States to register and several months were designated for this purpose in 1940. All post offices furnished the registration forms and accepted the completed documents, while committees of public-spirited citizens advised aliens in answering the questions. On the basis of a 1938 estimate of 4,300,000 aliens, it was expected that approximately 4,000,000 would register. Surprisingly enough the

[12] For a general discussion of marriage and citizenship, see S. P. Breckinridge, *Marriage and the Civil Rights of Women*, University of Chicago Press, Chicago, 1931; and L. B. Orfield, "The Citizenship Act of 1934," *University of Chicago Law Review*, Vol. II, pp. 99-118, December, 1934.

[13] The studies of the Wickersham Commission, published in 1931, revealed that the alien is not responsible for more than his share of the crime.

[14] In 1913 alone, some 1,200,000 immigrants arrived.

census estimation was all out of line on this point, for over five million aliens eventually registered.

Regulation of Immigration Although during the early years of the republic any and all immigrants were welcomed, it became apparent during the nineteenth century that some of those who elected to come were not assets to the country. There was fairly widespread discussion of the desirability of placing certain limitations on immigration, but counteracting forces that desired cheap labor, a market for poor lands, and easily influenced votes were able to stave off action for many years.[15] It was not until 1882 that Congress passed the first series of acts which excluded paupers, insane persons, and other extreme categories of undesirables. Also it excluded Chinese [16] who, although they do not deserve to be classed with the above groups, still were causing considerable animosity on the Pacific coast. Other limitations were added from time to time, until by the beginning of World War I the list of disqualifications exceeded thirty, of which the last added was that of illiteracy in the case of those over sixteen years old. Nevertheless, the tide of migration remained high, reaching an all-time record in 1913. The war, of course, made it impossible for immigrants to leave Europe, but at its conclusion there was abundant evidence of a prospective mass movement to the United States. Since economic conditions were none too good and since there were other vexing problems which might be complicated by the influx of additional millions of foreigners, public sentiment demanded drastic curtailment of immigration.

Acts of 1921 and 1924 Two experimental acts were passed by Congress in 1921 and 1924, but neither proved entirely satisfactory. The first set up a quota which permitted 3 per cent of the number of foreign-born already here in 1920 to enter each year. It made no provision, however, for granting entrance permits before the migrants left home. Consequently there was a grand rush

[15] As early as the fifties the American or "Know-Nothing" party gained considerable support by advocating restriction of immigration. It was particularly opposed to the Irish who had settled largely in the cities of the eastern seaboard, and therefore it had its greatest strength among the "old American" residents of those cities.

[16] This exclusion continued down to 1944. China now has a quota of 105 per year.

to get to the various United States ports before the quotas were exhausted. This obviously worked a great hardship on those unfortunates who tore up their roots at home, who paid out hard-earned money for transportation, and who yet were not admitted to the "promised land." Moreover, since the system provided that the 1920 ratios of the nationalities of foreign-born residents in the United States be the basis for determining the number admitted from each country, it favored the southern Europeans who had formed the heaviest streams of recent immigration. The Act of 1924 instructed American consuls to examine prospective immigrants in the countries where they were stationed and to grant permits that would, except in rare cases,[17] guarantee admission to the United States. It also reduced the quota from 3 to 2 per cent each year and substituted the census of 1890 for that of 1920 in order that more northern Europeans might qualify.

National Origins Act Realizing that the problem of immigration was in need of serious study, Congress made provision for a study which was used as a basis for the National Origins Act, which became effective on July 1, 1929, and continues generally in force today. This act applies only to European immigration, but small Chinese, Philippine, and Indian quotas have subsequently been provided and residents of the Western Hemisphere are permitted to come in as long as they meet health and financial qualifications. It prescribed a maximum of 154,000 as a quota for each year and divided that quota among the various European countries on the basis of the number of people of such origin either by birth or by descent in the United States in 1920. However, no country received a quota of less than 100.[18] Because the great depression paralyzed the country at about the time the new act became effective, there was for several years little need for such a law.[19] Actually for a year or so during the depth of the depression more people were leaving the United States than were entering. The rise of the dictators in Europe, however, added to the attractiveness of the

[17] Diseases suffered after examination might result in rejection at Ellis Island, but the number of such rejections was almost negligible—about five per thousand.

[18] For a much more detailed discussion of recent immigration regulations, see L. G. Brown, *Immigration*, Longmans, Green & Company, New York, 1933.

[19] In 1940, 70,756 immigrants were admitted. In 1943 only 23,725 came in. But by 1946 the number had increased to 108,721.

United States as a place of residence and large numbers of German Jews, Poles, Austrians, and others sought to be admitted. The end of World War II saw large numbers of persons, including foreign wives of American military personnel, waiting to enter the United States.

The Immigration Service The regulation of immigration was for some years administered by a Bureau of Immigration in the Department of Labor. As immigration became a less pressing problem, Congress set up a joint bureau to handle both immigration and naturalization. Since this bureau has more in common with the Department of Justice than the Department of Labor, President Roosevelt in the administrative reorganization of 1939-1941 transferred it to that department. Representatives of this bureau are stationed during normal times at consular offices in the countries in which most immigration originates; they examine the applications of those who wish to enter under the quotas. A border patrol watches the borders separating the United States from Mexico and Canada, attempts to prevent illegal entry, and tracks down some of those who are in the United States without authorization.

Deportations Aliens who commit serious crimes, who become public charges within five years after their entrance, or who turn out to be communists, fifth columnists, or other public menaces may be deported from the United States to the countries from which they came or to any other country that will receive them. During the drive against so-called "reds" in 1920 large numbers of persons were rounded up and maltreated and a smaller number transported at government expense to the Soviet Union. More recently there have been fairly large-scale deportations of gangsters and other criminals and of Mexicans who were among the first victims of the depression. During the worst of the depression when the drive against the gangsters was still active and when many aliens ceased to be self-supporting, something like twenty thousand persons were deported in a single year; but the recent record has varied from one fifth to one half of that number.[20]

[20] In 1933, 19,865 persons were deported at government expense. In 1943 deportations numbered 4,207.

Selected Bibliography

Brinkman, C., *Recent Theories of Citizenship in Its Relations to Government*, Yale University Press, New Haven, 1927.

Brown, L. G., *Immigration*, Longmans, Green & Company, New York, 1933.

Clark, Jane Perry, *The Deportation of Aliens from the United States*, Columbia University Press, New York, 1931.

Dunn, F. S., *The Protection of Nationals; A Study in the Application of International Law*, The Johns Hopkins Press, Baltimore, 1932.

Gettys, L., *The Law of Citizenship in the United States*, University of Chicago Press, Chicago, 1934.

Kansas, Sidney, *U. S. Immigration, Exclusion and Deportation, and Citizenship*, rev. ed., Matthew Bender & Company, Albany, 1940.

Kohler, M. J., *Immigration and Aliens in the United States*, Bloch Publishing Company, New York, 1936.

Maxson, C. H., *Citizenship*, Oxford University Press, New York, 1930.

Naturalization, Citizenship, and Expatriation Laws; Naturalization Regulations, Government Printing Office, Washington, 1934.

Seckler-Hudson, C., *Statelessness*, American University Press, Washington, 1934.

Van Vleck, W. C., *The Administrative Control of Aliens*, Commonwealth Fund, New York, 1931.

Willoughby, W. W., *Constitutional Law of the United States*, rev. ed., Baker, Voorhis & Company, New York, 1929, Vol. I, Chaps. 18-20.

7 · *Rights and Obligations of Citizens*

1 · *Rights and Liberties*

Their Scope The liberties of the people who inhabit the United States cover a broad field.[1] Many of the rights guarantee freedom in matters of personal conduct; others relate to the protection of those who are unfortunate enough to find themselves in the clutches of the law; still others have to do with property. Although the scope of these rights varies somewhat from time to time, depending upon the tenor of American life—in periods of national emergency they are invariably circumscribed to some extent—they are in general reasonably extensive. England has clung tenaciously to her heritage in this field and, considering the critical character of the times, has succeeded amazingly well in maintaining them intact. Nevertheless, in many places the United States is looked upon as the chief haven of personal freedom and property security, with the result that refugees have come from Europe in sizable numbers and eminent men, such as Albert Einstein and Thomas Mann, have sought American citizenship.

Source of Rights There is no single source from which our liberties have stemmed. Many of them go back several centuries to the struggles which the English commoners had with their kings; the rights they then won were embodied in the common law which we have inherited from them. Other rights were developed by the lengthy contact which the colonists had with the wilds and the open spaces of America and were expanded by the experiences of the frontiersmen as they pushed westward.[2] Certain important rights

[1] The rights given in the constitutions of both the United States and the forty-eight states ordinarily extend to aliens and citizens alike.

[2] For interesting discussions of the influence of the West, see F. J. Turner, *Influence of the Frontier in American History*, Henry Holt & Company, New York, 1893; and B. F. Wright, "American Democracy and the Frontier," *Yale Review*, Vol. XX, pp. 349-365, December 1930.

have been largely the contribution of the Supreme Court.[3] Congress and the state legislatures have done their bit by including liberties in the statutes which they have from time to time enacted. Also, custom and usage have played an important part in the building up of the body of rights.

Dual Basis of Rights Unlike countries with unitary governments where liberties rest on one foundation, the United States

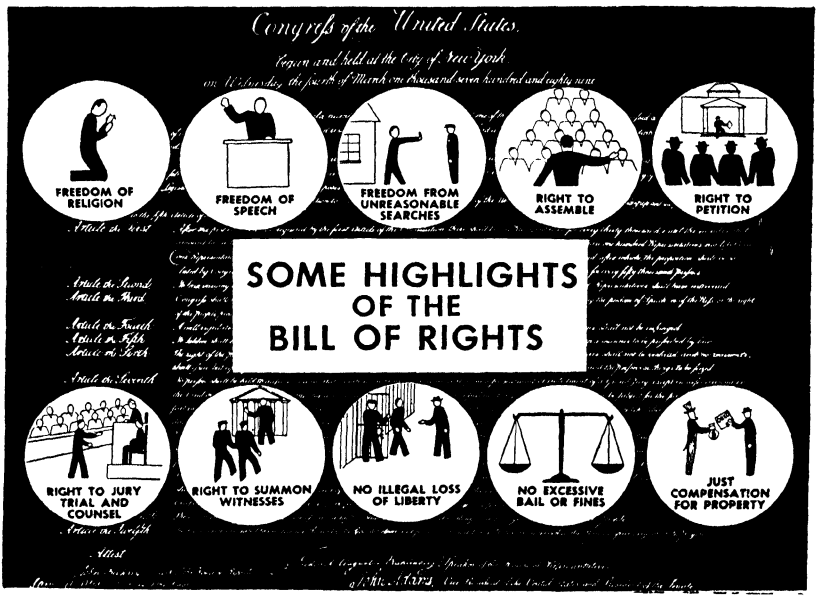


Chart by Graphics Institute, N.Y.C.

has no single basis for its popular liberties. Certain rights are granted by the national government, while others come from the forty-eight states. In general, the rights which are granted by the federal government coincide with those which the states permit—thus freedom of speech, the press, and religion are stipulated by the federal bill of rights and repeated in most of the state constitutions. On the other hand, there are liberties guaranteed by the federal Constitution which are not to be encountered in some of the states. Conversely there are in a few instances state liberties which are not enumerated in the federal Constitution. The question may present itself

[3] Perhaps the best example of this is the expansion of the due process clause.

as to why we have a dual system. The explanation is that each government under a federal form is permitted, to some extent at least, to specify popular liberties in so far as these involve a limitation of its officers and agencies.

Public Opinion and Rights Despite the fact that many of the rights of citizenship are now laid down in the Constitution and laws of the United States, it should not be supposed that such formal recognition constitutes a very adequate safeguard. In the last analysis these rights depend in very large measure upon public opinion—at least for their vigorous application. Under dictatorship by a political machine, for instance, rights have a disposition to vanish. If public opinion sleeps or is sluggish, all sorts of perversions will creep into the body politic. One may be sure that rights will be curtailed and even disappear.

Difficulty of Listing Rights Inasmuch as liberties have stemmed from different sources and are undergoing more or less constant change, it is not possible to compile a complete list of them, at least a list that will have usefulness over a period of time. Many of the most honored rights are, of course, easily accessible in the first eight amendments to the federal Constitution; others are to be found in the bills of rights which commonly are included in state constitutions. An adequate understanding of the rights resulting from judicial interpretation and statutory elaboration is somewhat more difficult, especially if more than a general picture is desired. Finally, it requires the most intimate knowledge of the current political scene if one is to appreciate the exact extent to which these rights are actually put into practice at any given time. In general, the rights at any period fall into three convenient categories: (1) those relating to personal conduct, (2) those regulating the judicial process, and (3) those which safeguard property.

PERSONAL RIGHTS

Slavery and Involuntary Servitude The Thirteenth Amendment to the federal Constitution prohibits slavery and involuntary servitude within the borders of the United States and consequently grants to citizens and non-citizens alike the right to be free from human bondage. The legal institution of slavery is definitely outlawed in the United States, but it is sometimes alleged that insidious forms of economic slavery continue to exist; indeed some critics

go so far as to maintain that Negro slavery was a very benevolent institution in comparison with the industrial bondage which is characteristic of American life today. With such diverse points of view toward the contemporary industrial system, it is difficult to arrive at any very categorical conclusion as to the truth of these assertions. Does the high degree of modern specialization which charges a worker with one very small task in the process of manufacture constitute a slavery which is worse than that of the Negroes a century ago? Many Americans apparently feel that it does, judging from the devastating descriptions which they present of the monotony, intellectual deterioration, and fatigue that supposedly accompany such labor. Is the status of the sharecroppers on the marginal lands actually less desirable than that of legal slaves? Do the company, plantation, and ranch stores which sell to employees on credit at high prices and the laws of some states that render it difficult to leave employment until bills at such stores have been settled in full make for an intolerable servitude? A great deal depends upon the psychology of the persons involved in all of these situations. The liberal intellectual who is accustomed to a life of variety and thrives on novel situations may observe the workers in a shoe factory or on an automobile production line and conclude that such repetition and monotony would be worse than prison. And it probably would in his case, but the real question is whether the worker on such specialized jobs have the same reaction? There is considerable evidence that large numbers of people not only like sameness but even find it distinctly preferable to successive shifting.

Apparent Violations Be that as it may there are certain less controversial, more obvious illustrations of violations of the spirit, if not the letter, of this right. For example, one can cite the laws of some of the western states which provide that sheepherders may not leave their herds until the ranch owners secure a substitute and which indirectly allow the latter to refuse to do this as long as the herder remains in debt at the ranch store. A series of peonage cases decided during recent years indicates that the Supreme Court is now more watchful in this field, with the result that this freedom is being extended in practice, even if it is not all that it might be.

Personal Service Contracts In keeping with the right to be free from slavery or involuntary servitude the courts, both federal

and state, have long refused to enforce personal service contracts, beyond awarding monetary damages. Thus a college boy who contracts with a business man to finance his school expenses in return for several years of labor after graduation cannot be compelled to carry through his agreement, although he may, of course, be sued for monetary damages.

Freedom of Speech and the Press Among the historic rights, obtained only after centuries of struggle, are those of freedom of speech and of the press. Some unsophisticated persons imagine that these rights are unlimited and confer the license to say anything or print anything that may be desired. Actually they always have certain restrictions attached to them and during times of national emergency may even be drastically curtailed. In ordinary times these rights are restricted in so far as they involve slander, indecency, incitement to insurrection, and similar offenses against the public welfare. Even if statements of an indecent character are based on facts, freedom of speech does not permit their public utterance, lest public morals be contaminated.

Freedom of Speech and the Press in Wartime During wartime it is invariably the custom to impose added restrictions upon speech and the press. The Sedition Act of 1798, the Espionage Act of 1917, the Sedition Act of 1918, the Alien Registration Act of 1940, and sections of emergency legislation enacted in 1941 are but a few of the laws that Congress has passed on the subject. In 1941 a special section of the Federal Bureau of Investigation was set up to deal with cases in which it appeared that speech or the press conflicted with the national defense program. Even in times of national emergency the United States record is reasonably good, although it is true that on several occasions there have been "scares" which led to excesses. Shortly after the United States entered the war in 1941 a censorship system was established. The record of the Office of Censorship in the United States proved satisfactory in general, though military censorship clamped down on correspondents abroad was severely criticized.

The American Record Whether the United States has gone too far or not far enough in extending freedom of speech and of the press is a moot question. The general license of the press in reporting cases pending before the courts has been unfavorably commented upon by many foreign visitors. It is said that cases are

tried in the columns of the newspapers, which, because they are motivated by profit, circulation considerations, and other factors, are irresponsible when it comes to determining guilt or innocence. It is true that the actions of some newspapers in the United States would occasion penal charges in most countries of the world. On the other hand, it is pointed out that freedom of the press keeps arrogant and irresponsible judges somewhat in check.[4]

Freedom of Religion Another historic right which applies to both citizens and aliens is that of freedom of religion. The original settlers in the American colonies had in many instances left their English and French homes to seek freedom of religion; consequently this right has been particularly dear to large numbers of their descendants. On occasion there has been intolerance—even on the part of those who themselves suffered hardships in order to worship God as they believed proper. The Klan scourge which spread so amazingly through the South and Midwest during the 1920's indicates how far religious intolerance can be carried even in this day and age. The recent treatment of Jehovah's Witnesses has been interpreted by some observers as a definite denial of freedom. However, in general this right has been well safeguarded. It should be noted that religious freedom does not carry with it the right to engage in practices that violate the criminal laws or the regulations relating to public nuisances.

Right of Assembly and Petition Both the federal and state constitutions confer on citizens the right to gather together and to "petition the government for a redress of grievances." [5] This has been held by the Supreme Court to include the general right to move freely about the country, for in order to petition it may be necessary to journey to Washington, thus requiring the crossing of several states.[6] Some states have sought to limit this right in the cases of those likely to become a public charge; [7] others impose fees that in a measure may be interpreted as having the effect of a

[4] For a more detailed discussion of this subject, see Z. Chafee, *Freedom of Speech in the United States*, Harvard University Press, Cambridge, 1941.

[5] In the federal Constitution, see Amendment I.

[6] See *Crandall* v. *Nevada*, 6 Wallace 35 (1867), and *Edwards* v. *California* 314 U. S. 160 (1941).

[7] Twenty-seven states may be cited, but in the "Okie Case" noted above, the Supreme Court ruled out such restrictions.

hindrance to free movement;[8] but in general the United States has a good record.[9] During labor disputes and strikes there has been a disposition on the part of certain states to deny the right to assemble. The right to petition has, however, usually been accorded, provided the petitioners contented themselves with presenting their petitions in writing. The right to petition apparently does not carry with it any enforceable obligation on the part of Congress and the President to heed such applications. Large numbers of petitions, some of which contain the names of thousands of persons, are sent to Washington every year. A few receive serious attention, but a great many are regarded as of slight importance.

Right to Keep and Bear Arms The Second Amendment to the federal Constitution specifically provides that "the right of the people to keep and bear arms shall not be infringed." For many years this was also regarded as a fundamental right by the states, but the increasing congestion of population, the rise in the crime rate, and the establishment of a professional army and police have served to render the keeping and bearing of arms not only unnecessary but a public menace. Increasingly, therefore, it has become customary for the states to limit the keeping of many types of arms to those who receive a permit from the police. All others are regarded in illegal possession of such weapons and may be dealt with accordingly.

Freedom from Unreasonable Searches and Seizures The Fourth Amendment to the federal Constitution declares that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and adds that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." This is another example of a right which was won by the English only after long effort and which was brought to the colonies by the

[8] Some states levy heavy fees on drivers of cars from plants in the Midwest to the Pacific coast when such cars are not their personal property. Trucks may also have weight and other taxes charged against them to such an extent that free movement across state lines is made difficult. See Chap. 5.

[9] However, as a wartime measure second-generation Japanese who are American citizens by virtue of birth were seriously restricted in their movements in 1942.

early settlers. Unlike certain other rights which have lost their meaning, this continues to be of considerable importance in both federal and state jurisdictions. As crime has become highly organized, the police have been constantly tempted to resort to ruthless methods. But for this historic right, it is probable that some houses would be ransacked at frequent intervals, not only because they might seem suspicious but also because the police might wish to display their authority. As it is, a search warrant must first be obtained, unless the police see a crime in the process of being committed or are in actual pursuit of a known criminal. Even so, there have been some modifications in the interest of police efficiency. The automobile, for instance, has presented a new and difficult problem and it has been held that the police do not need search warrants to stop and examine automobiles. Likewise, this right does not cover taverns, cabarets, pool halls, and other places of a public character where people are in the habit of congregating. But the common-law concept of a home as a castle still ordinarily prevails, with consequent necessity of swearing out a warrant before it can be violated or entered.[10]

Equal Protection of the Laws Whether they remain at home or travel in another state, residents of the United States have the right of being equally protected by the laws of the various states.[11] This right was originally intended for the assistance of Negroes after they had been freed from slavery, but it has been applied to all persons, including aliens,[12] and actually is one of the most important of the general rights now conferred. Exactly what is meant by "equal protection of the laws" is not specified in the Fourteenth Amendment; consequently it has been up to the courts to undertake an interpretation. Inasmuch as the Supreme Court

[10] Thus, in spite of the fact that in *Olmstead* v. *United States*, 227 U. S. 438 (1928), the Supreme Court gave its sanction to wire-tapping, the Federal Communications Act of 1934 provided "no person" should intercept any interstate communication. In 1937 in *Nardone* v. *United States*, 302 U. S. 379, the court held that even federal agents could not tap wires. However, many states do permit their police to tap intrastate communications.

[11] The equal-protection clause of the Fourteenth Amendment applies only to the state legislatures.

[12] Enemy aliens in 1942 naturally had their freedom curtailed. The more dangerous were arrested and interned, while all German, Italian, and Japanese aliens were required to notify the police and secure permits before journeying far from their places of residence.

does not go into such matters beyond the point involved in a given case, the process of interpretation has been a longdrawn out one, even as yet uncompleted.[13] On the surface, this guarantee would require absolute uniformity in the treatment of all persons, but actually the courts have permitted a considerable degree of variation under the guise of classification. The main purpose of the right at present seems to be that of obviating arbitrary, wholly unfair, entirely unwarranted discrimination. But if there is a reasonable basis for treating one class of people in a different fashion from others, then the courts have tended to uphold such legislation. Hence those receiving large incomes or inheriting sizable estates are expected to pay not only more in aggregate taxes but at a rate which becomes progressively higher as the income or estate increases. Despite the equal-protection clause California was permitted by the Supreme Court of the United States to prohibit Japanese from acquiring land in that state. Although it would seem anything but "equal protection," as that term would be simply defined, state laws have been upheld by the Supreme Court when they have taxed chain stores at the rate of $200 to $500 annually per store while owners of single stores have had to pay only $1.00 to $5.00.[14] On the other hand, the Supreme Court has recently displayed a considerable amount of concern for the equal treatment of Negroes. Recently this court has held that Negroes must be given equal facilities when traveling by train, equal educational opportunities, adequate judicial safeguards, and so forth.[15]

Freedom from Bills of Attainder Prior to the seventeenth century Englishmen had to put up with tyrannical treatment from their government. Among the practices of which they particularly complained were bills passed by Parliament ordering punishment without any court trial. These bills also frequently declared the property of the unfortunate person confiscated to the crown and sometimes carried the punishment so far that children and wives were involved. To protect themselves against such iniquitous practices the freemen of England finally made bills of attainder illegal. The

[13] Examples of recent cases having to do with equal protection may be cited as follows: *Smith* v. *Texas*, 311 U. S. 128 (1940); and *Arthur W. Mitchell* v. *United States, I.C.C., et al.*, 85 L. Ed. 811 (1941).

[14] See the law of Louisiana upheld in *Great Atlantic and Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412 (1937) for example.

[15] *Missouri ex rel. Gaines* v. *Canada, Registrar*, 305 U. S. 337 (1938), etc.

framers of the Constitution were sufficiently impressed by this English safeguard to include a similar provision in their draft, although they did not see fit to draw up a bill of rights.[16] At present it is well established in both the nation and the states that punishment shall be inflicted only after court proceedings and that the penalty shall not extend to relatives of the guilty person.

Freedom from ex post facto *Legislation* Along with the prohibition against bills of attainder the framers of the federal Constitution took over another historic English right: that forbidding *ex post facto* laws. This is probably of greater immediate importance than its twin, for there is still a disposition on the part of legislatures to pass such laws occasionally. If one looks up the meaning of the Latin words *ex post facto* he will find that they refer to something retroactive in character. On that basis Congress could not make a middle-of-the-year increase in income-tax rates apply to income earned during the first half of the year. Nor would it be possible for a state to apply a reduction in the penalty inflicted for first-degree murder from hanging to life imprisonment to persons who had committed such crimes while the old penalty was in force. However, the Supreme Court has ruled that *ex post facto* laws as prohibited by the federal Constitution include only those dealing with criminal matters and then only when such laws operate to the disadvantage of the accused.[17] Consequently Congress and the state legislatures have the authority to enact retroactive tax and other civil laws and to make retroactive laws in the criminal field as long as they do not make more difficult the lot of the persons involved. As the Constitution refers to *ex post facto* legislation the following types of laws are forbidden: (1) those which increase the punishment for an already committed offense; (2) those which make it easier to convict an already accused person; (3) those which make an act, innocent when committed, a criminal offense; and (4) those in which the general seriousness of a crime is "aggravated" or made "greater than it was when committed." [18]

Definition of Treason At previous periods in the history of the world treason has included almost every conceivable offense. The framers were mindful of the onerous and frequently intoler-

[16] Art. I, sec. 9.
[17] See *Calder* v. *Bull*, 3 Dallas 386 (1798).
[18] *Ibid.*

able character of a system under which all manner of acts are declared treasonable and consequently restricted treason to only two acts: (1) levying war against the United States, and (2) "adhering to their enemies, and giving them aid and comfort." [19] Not content with limiting treason to the most serious offences striking at the very foundation of the nation, the framers also saw fit to prescribe the conditions under which persons could be convicted of it. "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on open confession in court." [20] Finally, relatives of traitors cannot be penalized without cause; for although Congress is given power "to declare the punishment of treason," the Constitution adds that "no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

RIGHTS RELATING TO THE JUDICIAL PROCESS

Four of the eight amendments which constitute a federal bill of rights are devoted to rights relating to the judicial process; [21] state constitutions also deal with this process, though they do not always coincide with the federal provisions. Having examined some of the rights dealing with personal conduct, it is now in order to look at some of these safeguards that are placed around the judicial process.

Speedy and Public Trial In criminal cases it is ordered by the federal Constitution and most of the state constitutions that a "speedy and public trial" be accorded.[22] The latter portion of the requirement is invariably met by American courts; indeed it is taken for granted. Sometimes the size of the courtroom limits the number of those who can be permitted to attend trials in which there is great public interest, or the judge may order the courtroom cleared of minors on the ground that the nature of the testimony is such that moral contamination might result. But this is the exception rather than the rule. In contrast, the stipulation relating to a "speedy" trial is interpreted very liberally by American judges, especially in state courts, so that several months usually elapse before a trial can

[19] Art. III, sec. 3.

[20] The Supreme Court considered this clause in deciding the Cramer case in 1945 and by a five-to-four vote held that the fact of two witnesses must be clearly established. See the *New York Times*, April 24, 1945.

[21] These are Amendents V-VIII.

[22] Amendment VI.

be held; a period of two or three years is not at all uncommon between commission of the crime and final disposition of the case, while occasionally seven or more years may pass before a bitterly fought criminal case is finally settled by an appellate court. In no important country of the world is justice as slow-moving as in the United States and that despite the constitutional guarantee of a speedy trial.

Comparison of American and Foreign Records Under the codes of procedure which operate in a number of countries cases are often disposed of within a few days. American courts are in general the busiest in the entire world and that makes for crowded dockets. But more significant than that is the emphasis placed upon legal technicalities in most jurisdictions. Sometimes, attorneys feel that a slow trial, coming after the public has forgotten, is to the advantage of the accused, particularly in cases involving capital punishment. Judges not only are inclined to permit lawyers considerable leeway in such matters, but even under the law often have no authority to sweep away such technicalities, although they are irritated by the unnecessary consumption of time and effort.[23]

Writ of Habeas Corpus One of the most important guarantees relating to the judicial process still bears the somewhat mystifying title derived from the first two words [24] in the ancient form used by the English. When persons were arrested and held in jail without a trial, the English developed the writ of habeas corpus, which permitted prisoners to demand a court hearing at which they could be informed as to why they were being held. This writ was brought to America by the colonists and is at present guaranteed by the federal government and by all of the states except Louisiana.[25] Hence persons held in jail may instruct their lawyers to sue out such a writ unless they have been indicted by a grand jury or are otherwise held to face definite charges. A writ of habeas corpus has the

[23] The emphasis upon technicality is somewhat less than in the past.

[24] These two words literally translated mean "you have the body." The Latin form of the writ began with these words which were addressed to the jailer. They do not imply that the person named is dead and that the jailer is in possession of a corpse as modern usage might imply. The jailer is ordered to produce the "body" at a hearing before the judge who issues the writ and at a time which is fixed.

[25] Louisiana bases her legal system on the Napoleonic Code which makes no formal provision for such a common-law practice.

effect of bringing such persons before a court within a short period of time and compels jailers to satisfy the judge that proper grounds exist to justify incarceration.

Double Jeopardy Irrespective of what new evidence may be discovered by the police, it is not possible in either federal or state courts for an accused person "to be twice put in jeopardy of life and limb" for the same offense.[26] In certain instances this right permits those who commit serious crimes to go unpunished, with the result that the public safety may be impaired. On the other hand, if prosecutors and police, at times interested more in political advancement than in justice, were permitted to try an opponent on criminal charges again and again an intolerable situation would ensue. The English freemen who originally devised this safeguard were familiar with such perversion of the judicial process and concluded that it would be preferable to have a few guilty persons go unpunished than to perpetuate injustice. It should be noted that this prohibition does not extend to cases where the jury has been unable to agree.[27] Nor is an appeal by a convicted person to a higher court considered double jeopardy but rather the continuation of the one trial.[28] Finally, it may be pointed out that our laws are so complex at present that a number of crimes may be committed during what would appear to be on its surface a single offense. For example, a thief who robs a store of fifty cartons of cigarettes at night may have been guilty of the following crimes: (1) illegal entry involved in the breaking into the store, (2) theft of the cigarettes, and (3) disposal of the cigarettes to a "fence." The same act may be a violation of both state and federal laws and hence subject to punishment by both governments without interference by the double-jeopardy prohibition.

Right of Counsel All persons accused of criminal acts must be given the right to employ counsel of their own choice and to consult with their counsel in preparing a defense. If they are unable to pay for legal assistance, the courts of both state and federal grades are ordinarily obliged to furnish it as public expense. In the

[26] Amendment V.

[27] *Thompson* v. *United States,* 155 U. S. 271 (1894); *Lovato* v. *New Mexico,* 242 U. S. 199 (1916).

[28] *Trono* v. *United States,* 199 U. S. 521 (1905).

latter cases it is frequently the custom for judges to ask the newest members of the bar to act in such a capacity, with the result that the counsel may be inexperienced.

Witnesses In criminal proceedings an accused person cannot be compelled "to be a witness against himself." [29] Refusal to take the witness stand may, of course, be interpreted as an admission of guilt, but the accused can at any rate refrain from giving direct testimony in open court. Some observers contend that this right means relatively little in many jurisdictions because police make use of "third-degree" methods to extract signed confessions before the trial begins.[30] Of course, it is possible for an accused to assert that the confession presented to the court was obtained under illegal circumstances and the courts may take cognizance of this when determining the admissibility of such evidence or the weight to be attached to it.[31] Nevertheless, no fair-minded person can ignore the part which third-degree techniques play in modern American judicial administration as a modification of this right. The immunity from taking the witness stand also extends to a husband or wife of an accused person. If the accused waives his right, and voluntarily takes the stand for the purpose of presenting his side of the case, he must be prepared to be cross-examined by the prosecutors, for this type of questioning does not then constitute a denial of his rights.

Another guarantee to an accused person stipulates that he must "be confronted with the witnesses against him." [32] Before this right was established persons charged with criminal acts sometimes did not even know the identity of their accusers, to say nothing of what they said in court. A third right belonging to this category gives those who are being tried on criminal charges facilities for securing witnesses. A prisoner lodged in jail is in no position to obtain witnesses—even his attorney may find that difficult both because of the cost and the reluctance of some people to appear voluntarily in court. To enable an accused person to marshal all of the evidence pointing to his innocence, the "compulsory process for obtaining witnesses in his favor" is made available.[33]

[29] Amendment V.
[30] See E. H. Lavine, *Third Degree Methods*, Garden City Publishing Company, Garden City, 1934.
[31] *Chambers, et al.* v. *Florida*, 309 U. S. 227 (1940).
[32] Amendment VI.
[33] Amendment VI.

Use of Juries In federal cases persons charged with a "capital or otherwise infamous crime" [34] until recently always had to be indicted by a grand jury; under the new rules they must be so indicted or held as a result of charges lodged with a federal judge. Some of the states have substituted the process of information, in which the prosecutor lays the evidence which he has collected before the judge and asks for judicial sanction to proceed with a trial and this has been upheld by the Supreme Court.[35] In addition, the federal Constitution orders that a jury trial shall be given in all federal criminal prosecutions and in civil cases which involve more than $20. States usually have similar requirements, though they may be less far-reaching. Of course, the accused may elect to waive jury trial and request the judge to decide the facts as well as to apply the law, which is done in large numbers of cases. An additional requirement having to do with trial juries in federal criminal cases is to the effect that the jury shall be "impartial" and "of the state and district wherein the crime shall have been committed." [36]

Excessive Bail Bail is not permitted in certain types of criminal cases on the ground that such a concession would not be in keeping with the public interest. But when prisoners are allowed to go free on bail pending their trials, both the national government and the states usually prescribe that bail shall not be "excessive." [37]

Cruel and Unusual Punishment One of the quaintest provisions relating to the judicial process is that of the Constitution of the United States which declares that "cruel and unusual punishments" shall not be inflicted.[38] It might seem to most present-day students that any prison sentence or death penalty would be "cruel" if not "unusual." The men who drafted this amendment lived in a day when human ingenuity devised all sorts of strange and fearful punishments. Convicted criminals might be broken on a wheel, burned at the stake, dragged to death under a cart, have their ears cut off, and subjected to many other indignities. In order to ward off such inhuman tortures the prohibition against "cruel and unusual

[34] Amendment V.
[35] *Hurtado* v. *California*, 110 U. S. 516 (1884).
[36] Amendment VI.
[37] Amendment VIII.
[38] Amendment VIII.

punishment" was inserted. Punishment currently meted out in the United States is usually conventional.

Third-degree Methods Interestingly enough, the "cruel and unusual punishment" which once was primarily associated with court sentences is now almost confined to preliminary treatment accorded by the police. In other words, it is the third-degree methods which now frequently attain a character of cruelty and dreadfulness. Beating with a rubber hose may be as painful as some of the colorful practices of old; while the grilling which goes on without interruption hour after hour, sometimes for twenty-four hours at a stretch, involves as great torture to the nerves as some of the ancient devices today branded as "unusual." Of course, it is not accurate to say that such third-degree methods are legal, but they are sufficiently common to constitute a serious modification of the right to be free from "cruel and unusual punishment."

Due Process of Law The final right to be considered is a far more tenuous one; yet its importance is very great, perhaps exceeding that of any other single guarantee in this category. The Fifth Amendment contains a clause which forbids the national government to deprive anyone of "life, liberty, or property, without due process of law," while the Fourteenth Amendment repeats an injunction against such action on the part of the states. Exactly what is involved in the requirement of "due process?" It is impossible to draft a definitive statement which would remain adequate over any considerable period of time, for this guarantee is one which is undergoing more or less constant development. In the last analysis due process is what the courts, particularly the Supreme Court, say it is and they are faced every year with numerous cases necessitating the application of this clause. Roughly speaking, about 40 per cent of the cases which have come to the Supreme Court of the United States during the last half century or so have involved due process. As conditions of human existence change in the United States, new questions are raised in connection with judicial procedure; naturally, therefore, due process is not exactly the same today as it was yesterday and will not be entirely the same tomorrow as it is today. Nevertheless, the changes in the interpretation by the courts have been gradual and consequently permit certain generalizations. To begin with, the courts limited due process to the procedure of governmental agencies, particularly of courts. In-

deed it was not until almost a century had elapsed that substantive due process received much attention.

Procedural Due Process The Supreme Court has never attempted a brief statement which might be used as a definition of procedural due process; rather it has ordained that "the full meaning [of this term] should be gradually ascertained by the process of inclusion and exclusion in the course of decisions in cases as they arise." [39] Fortunately, however, the decisions of the Supreme Court hinge around three or four broad principles which are reasonably understandable: (1) a fair trial must be given, (2) the court or agency which takes jurisdiction in the case must be duly authorized by law to exercise such prerogative, (3) the defendant must be allowed an opportunity to present his side of the case, and (4) certain assistance, including counsel and subpoenaing of witnesses, must be extended.[40]

A Fair Trial In answering the query as to whether a fair trial has been given, the Supreme Court is increasingly looking behind the scenes, so to speak. At one time a proceeding was called due process if only the letter of the Constitution and the law was observed. Thus as long as the law did not expressly forbid Negroes from serving on juries, the court was willing to certify that there was no denial of due process, despite the fact that in practice Negroes were never called for such service. Now, however, the Supreme Court calls for evidence in regard to the actual operation of such a law and if it finds that Negroes have rarely if ever been permitted to act as jurors it declares that there has been a denial of due process in a particular state.[41] Again, until a short time ago the Supreme Court was satisfied with a perusal of formal records of lower courts. If, for example, the records showed that a judge had assigned legal counsel to an accused person who could not pay for such service himself the court would conclude that the constitutional requirements had been met. Beginning with the Scottsboro case,[42] the Supreme Court departed from its long-held policy and

[39] See *Twining* v. *New Jersey*, 211 U. S. 78 (1908).

[40] For an authoritative study which deals in much detail with this general topic, see R. L. Mott, *Due Process of Law*, The Bobbs-Merrill Company, Indianapolis, 1926.

[41] *Strauder* v. *West Virginia*, 100 U. S. 303 (1880); *Pierre* v. *Louisiana*, 306 U. S. 354 (1939). The Supreme Court based its decision in the former case mainly on denial of equal protection of the laws.

[42] See *Powell* v. *Alabama*, 287 U. S. 45 (1932).

inquired what counsel had been assigned and how long a time had been permitted that counsel for preparation of the defense.

Jurisdiction The second requisite in procedural due process is self-explanatory. Courts or other public agencies which act in such a manner as to deprive people of "life, liberty, or property" must be duly authorized by the law to exercise such power. It is obvious that the taking away of any of these is a serious matter which cannot be entrusted to all public officials, irrespective of their capacities.

Opportunity to Be Heard In every case, whether criminal or civil, the interested parties must be given an opportunity to present their evidence. This does not mean, of course, that they have full leeway in bringing all manner of irrelevant material to consume the time of the judge or administrative commissioner. Nor does it necessarily mean that time set aside for such a purpose shall be unlimited. But it does necessitate a reasonable consideration in such matters; pertinent facts cannot be refused admission, nor can such a brief period of time be allotted that it is out of the question to present the case.

Public Assistance Finally, procedural due process demands that a reasonable amount of public assistance be given to litigants in those cases where for reasons of impecuniousness or lack of knowledge adequate defense has not been made. The right to counsel is specifically set down in the Constitution, but due process would go further and lay down the rule that such counsel must be reasonably competent. Likewise, the services of the public authorities are provided for the subpoenaing of witnesses, but due process would again go further to inquire whether an honest attempt was made by the public authorities to locate the desired witnesses.

Substantive Due Process in Relation to Criminal Proceedings In general, substantive interpretation of the due-process clause has had most importance in relation to property rights and civil law, but it is still necessary and vital as a protection against unfair criminal law and in consequence against unfair judicial processes. While procedural due process requires that the actual conduct of the trial be in conformity with objective standards of justice, substantive due process demands that the laws under which the trial is conducted be themselves just and fair. Part of substantive due

process is, in effect, about the same as the equal-protection clause. The laws must operate equally and without discrimination. More important, however, the phrase requires that the laws be exact. They must contain an ascertainable standard of conduct.[43] It would be obviously unfair if a person had no way of knowing whether or not a certain act would be illegal until after he has been convicted of disobeying an indefinite restriction. Of course, it is sometimes impossible even when the text of a law is clear to decide before the courts have ruled whether a borderline action is an offense or not. But, in general, laws must be accurate enough to guide the conduct and conscience of those who are subject to them.

PROPERTY RIGHTS

The third type of right, conferred upon citizens of the United States and to a generous extent upon aliens as well, has to do with property. Great emphasis has been placed upon this right by many people in high positions; indeed it is not too much to say that some influential citizens go so far as to judge such a right as the most fundamental of all, the very foundation of the American system of government. There is probably no country in the world where as much excitement can be generated as in the United States by a proposal which would seem to modify property rights to some rather minor degree. Not only is the term "socialist" in poor repute in most American circles, but its very mention is the cause of great perturbation in many hearts. Many of the endeavors of the national government during the 1930's aroused the most vigorous and deep-seated opposition on the part of many substantial citizens, largely because of the threat which was seen to property rights. Why the American people should react so much more positively to what would appear to be minor rather than major changes in property rights than other people of the world it is difficult to say. Socialists have been regarded as respectable for some years in Mexico and Chile to the south of us; in England there has been nothing like the disapprobation America has exhibited toward socialists.

Property Ownership The general American philosophy is that all forms of property should be privately owned. Exceptions would, of course, be regularly made in the case of warships, public buildings, highways, and related property, but natural resources,

[43] *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921).

industrial holdings, banking and insurance, utilities, distribution facilities, and most other forms of property are closely identified with private ownership. The government has made forays by setting up T. V. A., acquiring national forest lands, putting municipal water plants on a public basis, and creating federal reserve banks, but the broad expanse of the field has been left unimpaired. The most important steps taken by the government have probably been in connection with progressive income- and inheritance-tax rates; in this connection original ownership has not been interfered with, but a heavy share of profits and benefits of inheritance has been annexed by the government.

Regulation of Property Use While the institution of private property continues to enjoy a great deal of vigor in the United States, both the state and national governments have found it increasingly necessary to regulate its use. That is not to say that owners do not still enjoy wide discretion in directing its course, but it does mean that some attention has been given to cases where unregulated use conflicts with the public interest. Hence the national and state governments everywhere now impose certain requirements upon those who engage in furnishing transportation facilities, electrical energy, gas, telephones, credit, insurance, amusement, hotel accommodations, and related services. Standards are set up which regulate charges, financial dealings, safety, convenience, and so forth.[44] No longer can a bank or brokerage firm unload on its clients the worthless securities of some foreign government without assuming some responsibility for acquainting them with the facts. Nor can transportation companies discontinue service without obtaining official consent merely because they are not making as much money as they would like.

Eminent Domain The Constitution by implication gives the national government the authority to take private property when it declares: "nor shall private property be taken for public use without just compensation."[45] States are given corresponding rights by their constitutions. The term "public use" is vague and has been variously interpreted by courts, but as a rule the government has displayed restraint in seeking to expand the meaning beyond land

[44] In not all of these cases are charges regulated or financial dealings limited.
[45] Amendment V.

for military purposes, for post offices, for highways, and for public buildings. Nevertheless, there are court decisions in the states which uphold the acquisition of electric generating plants, water systems, grain elevators, and certain other properties. "Just compensation" is also subject to some ambiguity, for it does not specify who shall do the determining of what constitutes "just compensation." Ordinarily the public officials seek to agree with the holder of the property on a fair price; if that proves futile the condemnation is put through a court, which, after hearing testimony from both sides, renders a decision as to the price to be paid by the government.

Substantive Due Process The development by the Supreme Court of substantive due process has been highly significant in connection with property rights. Thus the court has declared invalid minimum-wage laws, maximum-hour laws, industrial court legislation, legislation limiting the use of injunctions in labor disputes, and numerous other acts on the ground that such regulation constitutes a denial of substantive due process in the holding of property.[46] The attitude of the Supreme Court has undergone far-reaching change during the years since 1936, with the result that some earlier decisions have been reversed[47] and certain others would in all probability not be upheld if they came before the court now. Consequently substantive due process is now somewhat less of a safeguard against state and federal police power than previously, but it remains important.

[46] *Lochner* v. *New York*, 198 U. S. 45 (1905), declared maximum hours for bakers unconstitutional. *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923), outlawed minimum wages for women. *Truax* v. *Corrigan*, 257 U. S. 321 (1921), refused to permit states to limit the use of injunctions in labor disputes. *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522 (1923), held the industrial court of Kansas to be a violation of the due process clause.

[47] *United States* v. *F. W. Darby Lumber Co.*, 85 L. Ed. 395 (1941), upheld wage and hour legislation in interstate commerce and *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), reversed the Adkins case. *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468 (1937), which upheld the Wisconsin Labor Code, and *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937), which upheld the Norris-LaGuardia Act had the effect of negating the Truax case.

2 · *Obligations*

THE RELATION OF OBLIGATIONS TO RIGHTS

There has been a great deal of emphasis placed on the *rights* of American citizens; indeed one of the favorite pastimes of public orators and commentators has been that of pointing out how superior the United States is to other countries in this respect. It is perhaps not strange that much less attention has been paid to the *obligations* of citizens, for the very word "obligation" suggests burdens, sacrifice, and other unpalatable responsibilities. Nevertheless, it should not be difficult to perceive that the continuance of the rights depends in no small measure on the extent to which the citizens shoulder their public obligations. Too often rights and obligations have been regarded as antipathetic, with the former to be prized and enjoyed and the latter to be despised and rejected. In reality, the two should go hand in hand, for they are intimately linked together.

Difficulty of Making a Catalogue of Obligations As in the case of the rights of citizenship, it is not a simple matter to make a complete list of the obligations. The number may be somewhat fewer than that of rights, but there is even less definiteness. The first eight amendments to the Constitution are frequently designated a "bill of rights" and list an imposing array of personal and property guarantees. There is no corresponding "bill of obligations." It is not the intention in this chapter to compile a full list, but in the succeeding paragraphs a number of the most significant ones will be examined.

Observance of Laws One of the most obvious obligations of a citizen is to observe the laws which have been enacted by the government. True, some of the laws have been carelessly drafted, while others embody hardly a modicum of wisdom and common sense. More than that, there are so-called laws which though still on the statute books have not been enforced for decades and indeed have long been rendered obsolete by changed conditions.[48] Certainly it is the duty of those charged with law-making to perform their task with care and wisdom; periodically it may be reasonably

[48] Professor Karl Llewellyn of the Columbia University Law School is of the opinion that the term "law" should apply only to those statutes which are commonly known and observed at any one time.

expected that they will set up committees to go over existing statutes for the purpose of recommending the revision of those which require modification and the repeal of those which have been entirely outmoded. But in so far as a citizen or indeed an alien knows that there is a law relating to a given matter, it is up to him to observe it whether he agrees with its provisions or not. In the event that he finds a law objectionable he has the right—in certain cases possibly even the duty—to seek its repeal. Needless to say, this is one of the most difficult obligations for freedom-loving Americans to accept, as is indicated by the congestion of the courts and our crime rate. The individual usually reasons that his infraction will do little harm; perhaps he argues that society has dealt unfairly with him and in ignoring a law he is merely getting even. But the fact that what may seem minor violations of traffic laws, for example, are responsible in aggregate for thousands of deaths to say nothing of numerous personal injuries each year ought to indicate to any thoughtful inhabitant of the United States that it is not possible to disregard laws without causing harm to the entire body politic.

ATTITUDE TOWARD POLITICS AND GOVERNMENT

The Dirty-hands Attitude One of the chief handicaps of the American system of government is the widespread feeling that politics must invariably be a dirty game and that anyone who participates is bound to become contaminated.[49] As long as citizens view political activity as dishonorable, and hence remain aloof themselves, they encourage the professional politician and the political machine to run the government. Fundamentally there is no reason why standards in politics or government should be any lower than standards in business, education, social organizations, or any other human groups—and it may be added that it is not uncommon even under present circumstances to find fully as much honor and decency in governmental agencies as in business establishments or social groups. Standards in any human institution or organization depend upon the people who compose and manage them. If citizens

[49] A survey conducted by the National Opinion Research Center at the University of Denver in 1944 indicated that seven out of ten voters would not want to see a son enter politics as a lifework and that five out of ten think that it is practically impossible for a man to remain honest if he enters politics as a career.

are going to have their hands soiled by participating in politics it will be because they are weak to begin with.

Government-a-necessary-evil Attitude For centuries the Chinese held a philosophy which led them to view government as a necessary evil. As a result, they considered that the government which did the least was the most successful. They even erected a memorial to an emperor solely because he finished his reign in such obscurity that no one could remember what he had accomplished. Under a certain type of social organization there is, perhaps, much to be said for relegating government to such a minor role. However, in a highly industrialized economic system and in a western social organization there must be a powerful government through which the people may co-operate to promote their own welfare. It is possible to sympathize with those who would like to set the clock back and return to an earlier stage when industry was largely of the private-owner and nonmachine type, social life was less complex, and government furnished only the barest services. But the citizen who wants to keep modern industrial organization and the present complicated social system and at the same time limit the role of government to police and fire protection is hopelessly illogical. Such an attitude is inconsistent and displays a lack of appreciation of reality. A belief that the government is a necessary evil in this day and age is not one that a responsible citizen can fairly hold. That is not to say, however, that governments should be permitted to exceed their proper sphere and meddle in affairs that can best be left under other auspices.

An Understanding of the Role of Government Not only is it an obligation of citizens to rid themselves of the dirty-hands and government-a-necessary-evil attitudes; there is a more positive obligation to acquire some understanding of the role of government in the twentieth century. It is probable that most citizens desire a "good" government, but that is so ambiguous a term that it means little. To begin with, it is important to realize that the government is both a policeman and a provider of services. Some citizens seem to have in mind only the former and consequently regard government as primarily negative in character. It is essential to have some understanding of why the government must undertake to regulate business practices and social relationships, unless one is to fall into the far too common error of assuming that regulation is synony-

mous with persecution, baiting, and a dog-in-the-manger perverseness. On the other side of the picture, it is necessary to have some knowledge of what the government is doing in the way of providing services for the people, why such activities are being assumed, and what the effect of such undertakings has been on the general welfare.

Individual versus Public Welfare In commenting on the weaknesses displayed by the government of the United States certain critics have frequently pointed to the extreme selfishness which large numbers of American people display. It is maintained that the government of the United States may have a somewhat dark future because the people, busy filling their own pockets and using the government for their own ends, do not contribute as generously as they can toward a strong government or support public policies which look toward the general welfare. There is, indeed, a good deal of evidence that one of the most serious shortcomings in the United States is the "gimme" concept of government which is held by so many citizens. A study of the pressures which are exerted more or less constantly on various agencies in Washington reveals a depressing situation.[50] For every telegram, letter, or personal call from those who seek the general welfare of the country, there are dozens or even hundreds from the seekers of special favor. The manufacturers want a high tariff; the farmers ask for legislation giving them more than market prices for their products; the labor organizations demand minimum wages, maximum hours, collective bargaining, and other special privileges; the veterans appeal for pensions; and so it goes. Hundreds of pressure groups, with hordes of highly paid agents and substantial treasuries, descend on Washington to exert every influence that they can bring to bear in order to get legislation, orders, decisions, and other favors from the government, regardless of whether these may be for the best interest of the American people. In the state capitals the scenes are similar.

FAMILIARITY WITH THE STRUCTURE AND ACTIVITIES OF GOVERNMENT

Importance of Up-to-date Information It is not only a requisite that citizens have an understanding of the place of government in the modern world; they need to be informed of the cur-

[50] See Chap. 11 for a detailed discussion of pressure groups.

rent structure and activities of the government in national, state, and local spheres. This may seem a formidable obligation indeed in these days when governmental organization is complex and public activities cover a broad field. Of course, most citizens cannot be expected to be experts in these matters. Nevertheless, it is not impossible to acquire a reasonably good understanding of governmental machinery and programs without neglecting other demands. Such familiarity is almost bound to stimulate interest, which is of basic importance in a popular government. As a result of acquaintance with and interest in governmental forms and practices the citizen would be far more competent in choosing public-office holders, in expressing himself on public questions, and in making the basic decisions of policy on which representative government rests.

Sources of Information When asked to assume this obligation, many citizens may raise the query as to where they are to secure such information. The press, the radio, and the public library at once come to mind. They are within reach of the majority of citizens, although there are undoubtedly many instances where they are not available. It may be objected that newspapers have their own selfish desires and consequently color the news to fit their own interests, so that information derived from such a source would be inaccurate. Admitting that such is the case, there is a considerable amount to be learned, for the bias is likely to be confined to certain items and sometimes is so apparent that it would not mislead anyone. The federal requirement that broadcasting stations must devote at least 15 per cent of their time to educational programs necessitates a good many broadcasts which are of value in this connection. Even the most modest library is likely to have on its shelves books and periodicals which afford assistance to those who are interested in learning about public affairs.

Governmental Reporting More and more the government itself is realizing its own obligation in connection with an informed citizenry. A few years ago there was scarcely a government department that maintained even the simplest of press bureaus, but at present most of the sizable agencies of the federal government include such a service. Some of the work of these bureaus may not be as well done as it might be; there has been a complaint among newspapers that the departmental press bureaus lack news sense and

consequently expect the newspapers to run stories that are neither timely nor interesting. Nevertheless a beginning has been made in this field. The President himself seeks to inform the citizens of some of the national problems through his radio broadcasts and his frequent meetings with the representatives of the newspapers and press services. The heads of the major departments also have their regular days for being interviewed by the press.

Recent Progress For many years it has been the habit of federal departments as well as a good many state and local governments to issue formal printed reports. Some of these have dealt with special problems of one kind and another; many others have been of the annual variety. In general, these reports have been forbidding in appearance, lacking in organization, and unilluminating in content. As a result they have not been widely circulated and even those who took the trouble to secure them have in many cases given them little or no use. During the last twenty-five years very encouraging progress has been made by some government units or departments in issuing reports.[51] Instead of pages and pages of uninterpreted, uncorrelated, and hence meaningless statistics, these newer reports use well-written summaries, charts, photographs, and diagrams. The attractiveness of the binding and the quality of the paper have received attention.[52] An attempt has been made to get the reports into the hands of citizens.

Visual Aids Some attention has been paid to visual aids by government departments. The Department of Agriculture, for example, has prepared films dealing with soil erosion and other national problems.[53] Several agencies have prepared exhibits which have been sent on tour. In a number of instances charts have been

[51] In this connection students are referred to the following: National Committee on Municipal Reporting, *Public Reporting*, Municipal Administration Service, New York, 1931; H. C. Beyle, *Governmental Reporting in Chicago*, University of Chicago Press, Chicago, 1928; Wylie Kilpatrick, *Reporting Municipal Government*, Municipal Administration Service, New York, 1928; *National Municipal Review*, annual articles on reporting by Clarence E. Ridley, beginning in 1927; Urbanism Committee, report on *Urban Government* to the National Resources Committee, 2 vols., Government Printing Office, Washington, 1939, Vol. I, part III.

[52] See the reports of the National Resources Committee on Urbanism for example.

[53] *The River* and *The Plow that Broke the Plains* received high praise as documentary films and were placed by critics among the best examples of motion-picture art.

printed in considerable numbers for circulation among interested persons.

ACTIVE SERVICE FOR NATIONAL DEFENSE

Service in the Armed Forces It has been generally agreed that citizens of the United States are obligated to bear arms in defense of the country during times of emergency. In cases where citizens have religious beliefs which conflict with military service the authorities have ordinarily been disposed to permit substitute activity of a nonmilitary character.[54]

Labor and Capital With modern warfare so largely dependent upon industrial efficiency, there has arisen the question as to whether the services of labor and capital are not just as obligatory as enlistment in the armed forces. It is very difficult to make a case for military service on the part of young men when plants, manpower, and money are not drafted although they are just as basic to successful national defense. Yet labor raises a hue and cry lest the wage standards which have been won after so long a struggle be jeopardized, while capital is always seeing the bogey of government ownership when temporary control is suggested and it insists on a "fair profit." A telling objection to any general drafting of industrial plants is that the government has so many duties to perform that it would in all probability be less capable of running the plants than the private owners. The very least that can be expected is that capital will put itself at the service of the government with no more than a normal rate of profit required and that labor will then satisfy itself with a normal wage.

FINANCIAL SUPPORT OF THE GOVERNMENT

Payment of Taxes All governments require sizable sums of money for their operation, which must be derived in the last analysis from the taxpayers. It is a well-established obligation on the part

[54] During World War I those conscientious objectors who were willing were given quartermaster jobs. Those who refused to engage even in such activity were ordinarily sent to prison. Because of the subsequent criticism aimed at this treatment, the Selective Service Act of 1940 not only permits partial objectors to be assigned to the quartermaster and related corps, but even allows the most adamant to serve, at their own or a church's expense, in conscientious objectors' camps, doing work similar to that done by the C.C.C.

of citizens to pay the various taxes which are levied on them. Since taxes are compulsory, it might seem that such an obligation would require very little moral will on the part of citizens, but there are constant temptations to tax-evasion practices, the resistance to which is a genuine responsibility. Influential politicians have often made use of their positions to secure low assessments and in some cases have escaped the payment of taxes altogether. In the case of income taxes there is the failure on the part of some, risky as it may be, to report all income. Unscrupulous persons with large wealth have sold securities to their wives or friends in order to take advantage of provisions in the law relating to stock losses. It has been a fairly common practice for persons with large incomes to employ the wiliest of lawyers to discover loopholes through which they may escape with substantial savings. In certain localities tax strikes have been staged. If these are aimed at bringing pressure on a corrupt and irresponsible administration, they may be justified; otherwise they are not in keeping with responsible citizenship.

Pressure in Favor of Borrowing One of the most insidious temptations which taxpayers have to confront has to do with the substitution of borrowing for taxation. With taxes already high and the public expenditures enormous, there is the problem of how much to raise through taxation and how much to finance through borrowing. It is rarely pleasant to pay taxes and tomorrow is always another day.[55] Consequently citizens are prone to ask their congressmen to keep the tax rate down within reasonable limits and to borrow the remainder of the cost of government. The least that citizens can be expected to do is to face the problem squarely. The imposition of too heavy taxes might paralyze the economic system; on the other hand, the piling up of an enormous debt to escape the unpleasantness of current tax burdens involves the dangers of severe inflation, debt repudiation, and the scaling down of the debt by honoring only so much per dollar, which in turn threaten the security of large elements of the population which depend upon life insurance, savings accounts, and old-age annuities.

Purchase of Public Securities In ordinary times public securities can be absorbed by banks, life insurance companies, and other large investors, and consequently the rank and file of citizens

[55] The author has met only one person, an Iowa farmer, who maintained that he enjoyed paying taxes.

are not obligated to purchase government savings bonds, national defense stamps, and other types of securities. However, during times of emergency, when the need for borrowing becomes great, such an obligation presents itself. This is not so much because the government cannot raise funds from other sources as because it is desirable to have large numbers of citizens feel the responsibility which comes with the ownership of public securities. Likewise, when the debts are paid, there is less danger of dislocation of the economy if large amounts are held by individuals rather than by financial corporations alone.

TOLERANCE

Special Importance in a Democracy In a government which is based on democratic principles an attitude of tolerance on the part of the citizens is almost essential. This is especially the case in a country which is made up of as many diverse racial, religious, and cultural groups as the United States. If Anglo-Saxons are pitted against Latins, blacks against whites, gentiles against Jews, Protestants against Catholics, there will be strife and bitterness rather than harmony and co-operation. The energy which is required for effective operation of the government will be dissipated in the fruitless bickering of groups, with the result that there will be political weakness rather than political strength. It is not always an easy matter for citizens to display tolerance toward the aspirations and beliefs of fellow citizens. It is easy for Americans to point with horror to the inhuman Jew-baiting of the Germans, but it is not so pleasant to examine our own record of treatment of the Negro, the Mexican, the Japanese, and certain other racial groups within our borders. Much as we might like to assume that tolerance can be taken for granted in the United States, a cold examination of the facts indicates that it is an obligation which citizens must constantly strive to achieve.

Tolerance and Indifference In dealing with the importance of tolerance it should be clearly and emphatically pointed out that *tolerance* does not mean *indifference*. In the thinking habits of all too many citizens of the United States, the two are synonymous. Tolerance involves an admission that absolute truth is rarely attained and that consequently there are diverse beliefs which, although arising out of different backgrounds, nevertheless possess

some degree of merit and logic. In addition, tolerance requires an effort to understand the aspirations of fellow citizens who hold different political, social, and economic views. When tolerance degenerates into indifference, it becomes a serious liability rather than an asset. There can be little doubt that the widespread corruption which has characterized certain units of government at times has in large measure been the result of indifference on the part of the citizens. Indifferent citizens at best make for inefficient and irresponsible government; at worst they contribute more generously than they usually realize toward graft and other governmental perversions.

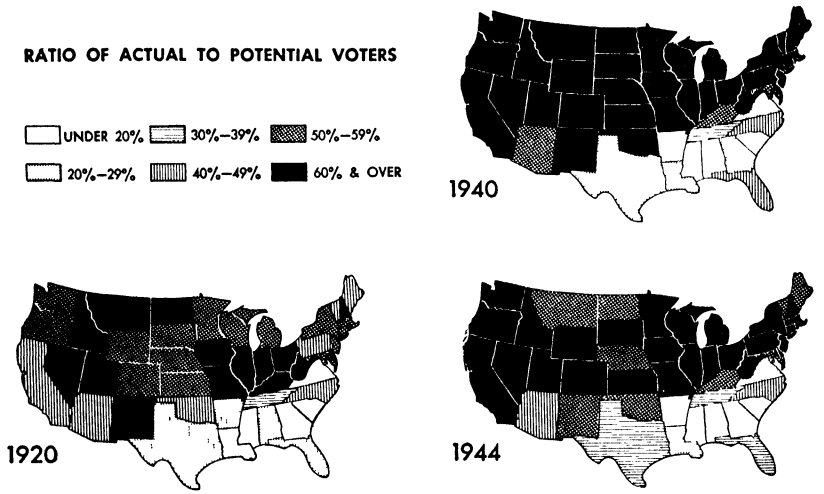
VOTING

An Obligation Only when Granted Most of the obligations which have thus far been discussed attach to all citizens irrespective of age, residence, or any other qualifications. In the case of voting this is, of course, not the case. Citizens under the age of twenty-one do not, except in Georgia where eighteen is specified, have such an obligation; nor do those who lack residence or other qualifications specified by law. However, the situation is quite different in the case of the millions of citizens who meet the legal requirements. A popular government presupposes the general participation of citizens; when many ignore such an obligation, there is at best weakness and at worst disintegration.

Qualifications for Voting Voting is very largely regulated by the forty-eight states; consequently voting qualifications are not uniform throughout the United States. In every state American citizenship is at present required for voting, though at times in the past certain states have permitted specified aliens to participate in elections. A minimum age of twenty-one years is ordinarily stipulated, but Georgia has lowered this to eighteen years and other states are considering such a modification. Residence of from six months to two years within a state is required, with one year regarded as reasonable by more than half of the states. In addition, states frequently lay down various residence requirements in counties and local districts, running from one year to thirty days in the case of the former and from one year to ten days in the case of the latter. Registration is necessary at least in urban areas before one otherwise qualified can cast a ballot. Though a poll-tax bar has re-

ceived severe criticism during recent years, several of the states continue to insist that those who would take part in their elections present a poll-tax receipt. Literacy tests of various types have been adopted by almost half of the states, while some ten states lay down property qualifications which may be substituted for a literacy test or other requirements.

Nonvoting in the United States Despite the fact that the suffrage was bestowed upon only the favored few during the early years of the republic and although it required long years of struggle



Pictograph Corporation for Public Affairs Committee, Inc.

to broaden the grant to all adults of both sexes, there has been a considerable disposition on the part of large numbers of citizens to remain away from the polls. In local elections it is not uncommon to have fewer than one half of the qualified electorate actually take part in the balloting—at times no more than one fourth or one third of the voters have cared enough to vote. In the general elections which involve the choice of presidential electors the situation is more encouraging, but even so it has been none too good at times. For example, in 1920 less than twenty-seven million persons out of a total population of more than one hundred and five million actually took part in the presidential election, although there were more than fifty-four million who belonged to the age groups twenty-

one or over. It is only fair to note that this election reached the low-water mark and that there has been substantial improvement since that time.[56] Although the results in 1924 were approximately the same as those of 1920, 1928 saw an increase in the total votes cast to more than thirty-six million, while 1932 witnessed an even more impressive showing of almost forty million votes. In 1936 the total vote fell just short of forty-six million, while in 1940 a record for the century was established by the casting of more than forty-nine million votes.[57] Of course, the population of the country was increasing during those years and hence the percentage improvement was somewhat less than the aggregates would show. Nevertheless, the percentage of those citizens twenty-one years and over voting jumped from just over 50 per cent to more than 80 per cent during the two decades—certainly an impressive increase.[58]

Compulsory Voting Despite the comparatively widespread interest now exhibited by adult citizens in voting, there are those in the United States who believe that it might be well to introduce compulsory voting. People have to pay taxes or incur a penalty, the argument goes, so why not compel them to vote or subject themselves to a fine? On the other side, it is maintained that compulsory voting only "leads the horse to water, but cannot make him drink." Opponents declare that the chief result of compulsory voting would be increased election expenses owing to the greater number of ballots and the increased voting facilities required. Pointing to the experience of Australia, Belgium, and Switzerland with compulsory voting these same critics emphasize the large number of blank ballots which would be handed in.[59] There is some reason to believe that compulsory voting might lead some citizens to acquire a sense of responsibility toward and even an interest in govern-

[56] For statistics covering 1856 to 1920, see A. M. Schlesinger and E. M. Erickson, "The Vanishing Voter," *New Republic*, Vol. XL, pp. 162-167, October 15, 1924.

[57] The 1944 vote approximated forty-eight million.

[58] A good deal has been written on nonvoting. The first extensive study, which, however, deals with a local election, is C. E. Merriam and H. F. Gosnell, *Nonvoting; Causes and Methods of Control*, University of Chicago Press, Chicago, 1924. A more recent book which has especial interest in the case of California is C. H. Titus, *Voting Behavior in the United States*, University of California Press, Berkeley, 1935.

[59] For an interesting article on this subject, see W. A. Robson, "Compulsory Voting," *Political Science Quarterly*, Vol. XXXIII, pp. 569-577, December, 1923.

ment, for pride would compel them to do more than meet the formal requirement. In principle at least, it is highly desirable to bring as large a proportion of qualified voters to the polls as possible. Yet viewing the matter concretely there is the question of what advantage would be gained from blank ballots or indeed from valid ballots cast by those who know little and care less about public affairs.

Causes of Nonvoting Indifference is not the only cause of nonvoting, although Professors Merriam and Gosnell found it to be outstanding in the Chicago municipal election of 1923. In contrast it may be pointed out that later studies made of the smaller cities of Delaware, Ohio, and Greencastle, Indiana, assigned indifference a less important role.[60] It is probable that a not inconsiderable part of the lack of interest in Chicago was the result of the rather recent introduction of suffrage for women.[61] In addition to indifference, there is the lack of legal residence which disqualifies numerous persons who have moved their places of residence shortly before election day. With the states ordinarily requiring one year of residence within the state,[62] as well as shorter terms in counties and precincts, those who have changed their residences recently necessarily are temporarily deprived of their suffrage. Absence from home disfranchises certain persons, particularly in those states where no provision is made for absentee voting. Then there are such factors as illness, the infirmities of age, incarceration in prisons or asylums, business or domestic cares, and bad weather. Failure to register plays an important part in nonvoting, although with the spread of permanent registration it is of less consequence than it once was. Finally, there is the situation which characterizes certain of the southern states. These states are so strongly wedded to the Democratic party that actual choices of public officials are made at party primaries rather than at general elections. Since the final election is almost purely a formality, there is little incentive on the part of voters to turn out. Then, too, it has been the custom of

[60] See B. A. Arneson, "Nonvoting in a Typical Ohio Community," *American Political Science Review*, Vol. XIX, pp. 816-825, November, 1925; and Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, pp. 148-151, survey made by Harold Zink and Harry W. Voltmer.

[61] The record was especially poor among women, who had enjoyed the franchise only since 1920.

[62] Requirements range from two years of residence to only six months.

certain southern states to put up such barriers that many Negroes are disfranchised.[63]

PUBLIC OFFICEHOLDING

Importance of Attitude Naturally, not all citizens can expect to hold public offices or positions; for even with the rapid expansion of public pay rolls to a point where perhaps five million persons depend directly upon the federal, a state, or a local government for livelihoods the majority of citizens are engaged in private business enterprises or professions. It can scarcely be maintained, then, that citizens have a general obligation to hold either public offices or positions. But they may be expected to look with respect upon such employment, for otherwise the prestige value of such positions will be low and well-qualified persons will not be likely to desire them. Professor Leonard D. White has pointed out the importance of such an attitude in his monographs *Prestige Value of Public Employment*.[64] Anyone who is familiar with the government of England will be aware of the role which social approval has played in attracting the most promising graduates of Oxford and Cambridge both to political careers and the administrative branch of government. If the general opinion is that only crooks and ne'er-do-wells are suited to be state assemblymen or justices of the peace, it is not strange that the well-qualified will shun such positions and that the proportion of the incompetent and unscrupulous will be high. There is no logical reason why public service should be looked down upon in the United States, for its importance is very great; yet such has been the case in many localities.

Obligation of Public Service While not all citizens may have the direct obligation to serve in public offices or in public positions, at certain times there may be a positive obligation. In periods of national emergency it is generally admitted that the federal government has first claim on persons who are particularly qualified to direct its programs. Consequently, numerous men of affairs will temporarily surrender their private business connections and take over responsibilities of a public character. But this obligation like-

[63] The recent cases decided by the Supreme Court involving Negroes point in the direction of wider Negro participation.

[64] University of Chicago Press, Chicago, 1929; and University of Chicago Press, Chicago, 1932.

wise exists when there is no so-called "national emergency," although unfortunately it is not so commonly admitted. When there is a paucity of suitable candidates for seats on a city council, a state legislature, a county board, or a school board, it is the duty of qualified citizens to offer themselves for such service, even if private business may be more profitable or personal inclination may shy away from such activity.

JURY SERVICE

Nature of the Obligation Juries may be less important today than they were half a century ago, but they continue to perform an important function in the administration of justice. The grand jury may disappear from the scene, as it has in England; more and more parties in both civil and criminal cases may prefer to have the judge decide the facts as well as apply the law. However, as long as juries are retained—and there is little evidence that they will ever be abandoned in many criminal cases—they deserve the services of intelligent and honest citizens. The laws of many of the states exempt so many occupations from jury service that it is particularly important that well-qualified representatives of the remaining classes acknowledge their obligation in this respect. In this connection it may be pointed out that public attitude also plays a part, as it does in officeholding. Not every citizen is obligated to undertake jury service, but it may be reasonably expected that all citizens will contribute by refraining from belittling the functions performed by jurors. When reputable members of the community refer with scorn to such an instrumentality of government, it becomes increasingly difficult to obtain competent jurors.

Selected Bibliography

Becker, Carl, *New Liberties for Old*, Yale University Press, New Haven, 1941.

Chafee, Z., *Freedom of Speech in the United States*, Harvard University Press, Cambridge, 1941.

Corbin, John, *The Frontiers of Freedom*, Charles Scribner's Sons, New York, 1940.

Curti, Merle, *The Roots of American Loyalty*, Columbia University Press, New York, 1946.

Cushman, R. E., *Safeguarding our Civil Liberties,* Public Affairs Committee, rev. ed., New York, 1943.

Day, Edmund, *The Defense of Freedom,* Cornell University Press, Ithaca, 1941.

Dorr, H. M., and E. H. Litchfield, *Facts about Your Job as a Voting Citizen,* Edwards Brothers, Ann Arbor, 1940.

Fraenkel, O. K., *Our Civil Liberties,* The Viking Press, New York, 1944.

H. F. Gosnell, *Democracy,* The Ronald Press, New York, 1947.

—, *Grass Roots Politics; National Voting Behavior of Typical States,* American Council on Public Affairs, Washington, 1942.

Hoover, Herbert, *The Challenge to Liberty,* Charles Scribner's Sons, New York, 1934.

Ickes, H. L., ed., *Freedom of the Press Today,* The Vanguard Press, New York, 1941.

Lien, A. J., *Privileges and Immunities of Citizens of the United States,* Columbia University Press, New York, 1913.

Lippmann, Walter, *The Method of Freedom,* The Macmillan Company, New York, 1934.

—, *An Inquiry into the Principles of Good Society,* Little, Brown & Company, Boston, 1937.

Litchfield, E. H., *Voting Behavior in a Metropolitan Area,* University of Michigan Press, Ann Arbor, 1941.

McCracken, H. W., and C. G. Post, *Invitation to Freedom,* Conference of Democratic Processes, Albany, 1941.

Merriam, Charles E., and H. F. Gosnell, *Non-Voting; Causes and Methods of Control,* University of Chicago Press, Chicago, 1924.

Mott, R. L., *Due Process of Law,* The Bobbs-Merrill Company, Indianapolis, 1926.

Patterson, G. J., *Free Speech and a Free Press,* Little, Brown & Company, Boston, 1939.

Pollock, J. K., *Voting Behavior,* Bureau of Government, University of Michigan, Ann Arbor, 1939.

President's Committee on Civil Rights, *To Secure These Rights,* Government Printing Office, Washington, 1947.

Stimson, F. J., *The American Constitution as It Protects Private Rights,* Charles Scribner's Sons, New York, 1923.

Taylor, H., *Due Process of Law and the Equal Protection of the Laws,* Callaghan & Company, Chicago, 1917.

Titus, C. H., *Voting Behavior in the United States,* University of California Press, Berkeley, 1935.

Voting in the United States, Council of State Governments, Chicago, 1940.

Whipple, L., *The Story of Civil Liberty in the United States,* The Vanguard Press, New York, 1927.

Wise, J. W., ed., *Our Bill of Rights,* Bill of Rights Sesquicentennial Committee, New York, 1941.

8 · *The Role of Political Parties*

THEIR RISE

Attitude of the Forefathers Although political parties have long been a very important element of the American system of government, they were not recognized by the men who framed the Constitution. That is not to say that they were unknown at that time, for they had operated in England for some years prior to 1787. But their general reputation among the leaders of the young republic was not good; they were associated with strife, division, chicanery, personal manipulation, rather than with unity and responsibility. The forefathers were, of course, anxious to do everything possible to strengthen the fabric of the new commonwealth and consequently gave no approval to such weakening influences as they considered political parties to be. Hence the Constitution itself makes no mention of parties.

Nevertheless, the men who constituted the convention of 1787 expressed in no uncertain terms their sentiments on the subject in their public addresses and writings, warning their fellow countrymen to beware of these insidious dangers. Perhaps no one who enjoyed a position of influence was more determined in opposition than George Washington himself. That attitude on the part of men of affairs and maturity strikes the present-day student as very strange, to say the least, for it has now long been apparent how essential political parties are in a popular government.

In defense of the founders it may be said that they lived in a period when such groups were just beginning to be tolerated. For centuries the watchword in public affairs had been unity—any difference of opinion had been regarded as disloyalty, even treason. Of course, there never was a time when everyone saw eye to eye on every public question, but those who differed from the monarch

GROWTH OF POLITICAL PARTIES IN THE UNITED STATES

Pictograph Corporation for Harcourt, Brace & Company, Inc.

or tyrant either kept their opinions to themselves or courted arrest and punishment, even to the loss of their heads. It was in England that the very important concept was evolved, which recognized legitimate opposition not only in individual cases but on the part of organized groups. Had the forefathers lived in England and witnessed the actual operation of political parties, it is possible, even probable, that they might have held a quite different opinion.

Early Rise of Parties But if the founders had so little use for political parties that they did not deign to mention them in drafting the Constitution, their attitude did not long prevail. Although the two administrations of Washington remained as aloof from political parties as was practicable, even Washington had to recognize the existence of such groups and included both Alexander Hamilton, the leading Federalist, and Thomas Jefferson, the most influential Antifederalist, in his cabinet. By 1800 the party system had ensconced itself quite firmly in the government, even to the extent of necessitating the addition of the Twelfth Amendment so as to make the electoral-college method workable. It scarcely needs to be added that since that time political parties have played a very important role in the United States. Sometimes they have been more vigorous than at others. National emergency may cause their temporary eclipse; an independent President may be able to transcend them for a time; but while men may come and go and issues may emerge and subside, the party system has gone on generation after generation.

The Succession of Parties The first political parties, which seem very weak and unorganized when set alongside of modern groups of the same type, did not prove too enduring. The Federalists and Antifederalists, or Jefferson Republicans, gave way to the Whigs and Democrats; the Whigs in the middle of the nineteenth century were supplanted by the Republicans. Moreover, there were developments taking place within party groups, which had the effect of bringing about substantial changes, often within a short time, again over a period of years. For example, it is doubtful whether the Democrats of the early nineteenth century would recognize as kindred spirits the Democrats of today or that the Republicans of Lincoln's time would see eye to eye with the Republicans of the last decade. Nevertheless, despite the changes that have

taken place, it may be pointed out that political parties in the United States have been more permanent than corresponding groups in most other countries.[1]

Two-party Character of the American Party System Although on several occasions it has seemed that there might develop more than two major political parties in the United States—for example in the 1850's and the second decade of the present century—and many political prophets have predicted the emergence of strong third parties, the party system has remained biparty in character. Here again the experience of the English has been similar, while the records of France, Germany, and Italy have been strikingly diverse.[2]

Minor Parties Along with the two major political parties there has always been a varying number of minor parties. Some of these have carried on over long periods, while others have been active only in a single election. The Prohibition party has been more or less on the scene since 1872; the Socialists go back to the 1890's; the Communists have been organized for something like a quarter of a century. On the other hand, the Free Soil party largely exhausted itself in 1848; the Progressive party rapidly disintegrated after 1912; and the Union party, which came into the limelight during the campaign of 1936, is now almost forgotten. Among other minor parties may be mentioned the Know Nothings, identified with the 1850's; the Greenback party of the seventies; the Populist party, which was active in the closing years of the nineteenth century; the Farmer-Labor party, organized about 1920; and the LaFollette Progressives, which appeared particularly active in 1924.

The influence of these minor parties has not been very direct, for they have seldom been able to elect any sizable number of national officials, although on occasion they have fared better in a

[1] Many parties in France under the Third Republic, for example, existed only two or three years. The majority of those active in any election could ordinarily look back on no more than a decade of existence, while the oldest were founded only about the beginning of the present century.

[2] The number of parties in these countries has varied from time to time. Italy and Germany have recently tolerated a single party, while France and Japan tried to get along without any parties at all for a period. Under other regimes these countries have had a dozen or more fairly influential political parties active at one time.

given state.[3] It may be doubted whether many of these political groups have exerted any appreciable influence at all; however, some of them have been a far larger factor in American affairs than the votes which they have polled or the officials they have elected would show. For example, the Socialists, despite efforts stretching over some half a century, have never come within striking distance of electing a President or of having even a sizable representation in Congress—ordinarily they have not had a single member. Yet they can claim with some accuracy that virtually every plank in their original platform, drawn up at about the turn of the century, has been enacted into law. They have not, of course, been able to put a program through themselves, but they have exerted sufficient influence to cause the two major parties to take over these planks.

FUNCTIONS OF POLITICAL PARTIES

Every resident of the United States knows something about political parties, for their activity is such that even the most indifferent of persons cannot be oblivious to their existence. Yet it may be doubted whether most citizens have a clear-cut idea of the functions which they perform. Considering the fact that some of the functions are not handled very successfully, perhaps such a state of unfamiliarity is not surprising.

Four important functions have commonly been associated with political parties in the United States. To begin with, they exercise a very important role in connection with the election of public officials. In the second place, they are supposed to give the voter an opportunity to select issues which he wishes put into practical operation or effect by the government. In the third place, they are charged with assuming a considerable measure of responsibility for the satisfactory conduct of government. And finally, they are assigned the task of stirring up the interest of the citizens in public affairs, getting the voters to the polls, and keeping the political pot boiling. These are sufficiently important to warrant further examination.

1. Nomination of Public Officials Under the provisions of the original Constitution voters were apparently expected to go to

[3] The Farmer-Laborites have dominated several states at times, the most important being Minnesota. The LaFollette Progressives enjoyed a large measure of success in Wisconsin for some years.

the polls without consulting their neighbors and to cast their ballots for the person or persons whom they considered best qualified to hold public office. Theoretically such an arrangement would, of course, be fine, but in practice it scarcely works. Given a New England town meeting, it may be feasible to have local officials chosen on the basis of the free choice of the voters; in certain of the Swiss cantons such a plan seems to operate somewhat satisfactorily. But if thousands, to say nothing of millions, of people belonging to a single unit of government have the responsibility of choosing its officials, some organized assistance is necessary. Try the experiment of having the members of a class vote for some office. Even if the choice is to be limited to the individuals who constitute the class, a vote taken without caucuses or group discussion will usually show that at least half of the members receive one or more votes, while no one polls more than a small proportion. If this unguided method is extended to a state, a congressional district, a county, or a city, there is little likelihood that any choice could be made that would represent any significant proportion of the voters.

Under a system such as ours, public officials are supposed to be the choice of a majority of the people; while this may not be always possible, at any rate they should be supported by a sizable fraction. In order to avoid confusion or even chaos, some arrangement has to be made which will permit the voters to indicate their choice among a small number of candidates. The direct primary and the party convention have been devised to perform such a service, but it is the political parties that do most of this work, even under the direct-primary plan. The parties designate their candidates for the various offices; the voter then supports the particular candidate whom he regards as best. Under this arrangement the holders of office may not have the support of a majority, but except in the southern states where final elections are regarded as mere formalities,[4] they will usually receive the votes of a substantial plurality.

Criticisms of Party Nominations There is no lack of interest on the part of political parties in the making of nominations;

[4] Where only one party exists for practical purposes, actual choices of public officials are made at party primaries. Hence there is no purpose in taking the final election seriously, for it merely ratifies the choice of the primary.

indeed it sometimes seems that their sole concern is selecting candidates for office and seeing that they are elected. Their frequently criticized weakness is not the failure to put up candidates, but rather the poor quality of the candidates selected. At times it seems that the parties have gone out of their way to pick inferior candidates, but ordinarily it is a case of not using the best judgment. The party organizations often become the creatures of political bosses, political machines, selfish interest groups, and other usurping elements, with the result that candidates are chosen who will do the bidding of these powers. It is obvious that the nominating function breaks down under such circumstances, for popular government cannot prosper with officials of this character at its helm. The machinery which political parties employ for this selection is none too satisfactory. The traditional convention is usually too large, too unorganized, and too rushed to give adequate attention to the nomination of candidates—that is true even when the delegates are free creatures rather than the minions of political bosses.

Contributing Factors In defense of the party system it may be pointed out that there are many factors beyond party control which hinder their most efficient working. For instance, state laws provide for the nomination of candidates in many places. Likewise, the problem of finance is a difficult one which leads to assessments of anywhere from a few dollars to $10,000 or more on those who wish to be considered. Also party members are indifferent and permit the party machinery to be taken over by political bosses and machines. Frequently, local pride is such that geographical representation has to govern selections irrespective of other qualifications. The popular bias against city dwellers is often so pronounced that only those who have been connected with rural areas can be elected. Men of means or who have succeeded notably in the management of business are sometimes ruled out because of the antipathy which large numbers of voters display toward such persons. Since the party will be in a sad condition if it does not elect its candidates, it must take no unnecessarry chances in putting up candidates who might not attract votes.

Character of People In conclusion, let it be said that much of the failure on the part of political parties in this respect goes back to the character of the people. If people are so wrapped up in their own private business, family, or social life that they can

find little or no time to interest themselves in public affairs, it will not be surprising that political bosses and machines scuttle the parties. If voters will support any candidates put up by a party, regardless of their qualifications, there will be little incentive on the part of the party to do a good job of nominating. If election is determined by such factors as religion, race, occupation, and place of residence, stupid choices are likely to be in order. Everything considered, it may be surprising that political parties are as responsible as they have shown themselves to be. In those sections where the public sentiment demands better handling of this function, it is encouraging to note that it is generally forthcoming.

2. Presentation of Issues In a democratic government it is essential that there be some means by which the people can indicate their opinions on public questions. Unless this is provided, a government can be regarded as democratic only in name. Several avenues are open for such expression of opinion in the United States, but the most important is the occasion offered at election time. Measures are sometimes referred to voters for a "yes" or "no" answer. Individual candidates promise to work for certain items if elected to office, but they may be able to accomplish very little, even if they attempt to carry out their commitments. However, if political parties take stands on far-reaching questions of a public character prior to a general election, they afford an opportunity for the electorate to indicate what it desires the government to do. The party which is given a mandate to take over the government may proceed on the assumption that the majority of people as represented by the voters favors a certain course. Thus the government takes on a popular character.

Recent Record At times political parties have performed this function quite well, but during recent years there has been a decided tendency to straddle issues, rather than to take a stand on them. This shirking of responsibility has weakened one of the chief props of democratic institutions in the United States. Some critics have charged that there has been no actual difference between the Republican and the Democratic parties since 1912. This assertion may be exaggerated, but it has considerable basis as a result of the reluctance of the political parties to commit themselves to a definite course. The lack has been met somewhat by a more direct assump-

tion of leadership by the President. However, valuable as this development may be, it does not take the place of the party presentation of issues at election time.

Individual Interpretation In consequence of the refusal of parties to take a definite stand on contemporary questions, there has been a tendency on the part of the electorate to recast the vague, straddling sentences of party speakers and party platforms into more definite ideas. Since voting, particularly in national elections, involves a choice between two supposedly opposing sets of ideas and betwen two supposedly opposing men, this tendency of the popular mind to translate evasive platforms into direct and to some extent oppositional stands is an almost inevitable development. It is the only means by which the people can make any choice at all. They obviously cannot choose between two men who claim that they support about the same middle position on all current issues. They must, at least those of the people who think about their votes must, have a basis for making a decision. The only way that seems to be open now is an individual interpretation of the positions of the parties. Naturally the average voter makes many misinterpretations; hence when he votes he is quite possibly not voting for what he thinks he is at all. Moreover, the men he has helped to elect may themselves reinterpret their pre-election statements in a very different fashion from the understanding which the voter had.

Why Parties Neglect the Presentation of Issues There have been numerous attempts to account for the poor record of political parties in this matter. Several keen students have built up a considerable case for the introduction of a multiple-party system, maintaining that issues are at present so complex that they cannot be divided into two sides. The substitution of three or four powerful parties for the present two would, according to these critics, make it feasible and probable that clear positions would again be taken on important public questions. Others declare that governmental policies have become far too involved for the ordinary citizens to understand and that consequently voters must pick out the candidates that seem to promise most, leaving them a free hand to do as they think best after election. Then it is alleged that the people are no longer interested in issues and that so few pay any attention to them that political parties have no incentive to take a stand. Both of

these last assertions involve, however, an admission that popular government has either been rendered impossible by conditions of modern life or that the rank and file of the people have lost interest in democratic principles. Finally, there are those who see in the present situation a striking evidence of the deterioration or dry rot of the very vitals of the political party system. They believe that issues could be found, that the people still would welcome them, but that the party leaders are so irresponsible and stupid that they refuse to perform their necessary public duty.

Complicated Character of Current Issues There is doubtless some truth in all of these explanations and conversely no single one of them is an adequate explanation. No serious student can dispute the complicated character of many of the issues of the day. To answer them by a mere "yes" or "no" may be impossible or at the very least unsatisfactory. Consider, for example, the question of whether the government shall pursue a vigorous policy in regulating current business practices. A group of very conservative people regard any government regulation of business as entirely unjustifiable and even evil; they could indicate their positions by an emphatic "no." At the other extreme, there are those who declare that private business has proved so inept, corrupt, and selfish that it must be rooted out and replaced by complete government ownership and operation. They would doubtless find a plain "yes" quite sufficient to state their position. But in between these extremes the majority of the people arrange themselves in gradations—some wanting a little more government action, others desiring quite a good deal more regulation, and still others favoring very strict government regulation but not actual public ownership. It is evident that two political parties can scarcely present this issue in such a fashion that the rank and file of voters could express themselves with any degree of satisfaction. The introduction of the multiple-party system would at least in theory go far to correct this impasse.

Issues of Broad Character Likewise, while one may not subscribe to the assertion that public problems have become too technical to permit the average man to have an opinion, it must be admitted that there is some basis for that belief. If the people are to take sides on an issue, the question must be clear cut and of broad character; if all manner of technical details are at stake and

the basic principle one which involves expert background, the people cannot be expected to furnish adequate guidance. Many of the current questions seem, however, to be of such a character that the general public might be expected to have a real contribution to make in arriving at a decision. For example, the problem of whether to follow a policy of large-scale borrowing is one which is no more technical than the problems which were presented to the American people during the nineteenth century. It will be the people who will have to pay the heavy taxes or suffer the consequences which may eventually arise out of a constantly-increasing debt. Who is better fitted to decide such a question, then, than the people?

Technical Questions On the other hand, many problems are highly complex in nature and do not lend themselves to popular decision. After the people have decided that they want to slow up the borrowing process, it will probably be necessary for the tax experts to work out a scheme for raising essential funds, for the average man is not sufficiently informed on the details of public finance to say how the money can be raised with least effort. If the people indicate that they prefer to run future risks rather than to bear heavier current burdens, then it is again up to the experts to suggest how the borrowing can best be handled, for the rank and file of the people have little or no experience in such details. After the experts have recommended, the decision can be left up to Congress and the President.

3. Assumption of Responsibility for Government A third function of political parties involves the assumption of responsibility for the conduct of government. After election victory, a party takes the offices in the executive and the legislative branches and proceeds to carry on the work of government. Since large numbers of individuals are involved, it is essential that some unifying influence be provided. The most effective agencies for bringing about co-ordination over a period of years have been the political parties. They have established their caucuses in the legislative branches, appointed party leaders, and designated party whips. Their national and state committees have exercised an influence in bringing the executive and the legislative branches into harmony. Likewise, much of what co-ordination there is between state and federal activity is on the basis of the party relationship.

Control of Public Officials Not only have political parties attempted to focus the attention of all agencies of government on one goal, but they have been able to bring coercive pressure on certain officials who have tended to be derelict in their duties. After the voters have elected an official to office, they no longer have a very adequate check on him—at least until the next election. If the official has no interest in running again, if the law does not permit him to succeed himself,[5] if he has already made such a fool out of himself that his future chances of re-election are nil, the voters are more or less helpless in compelling responsible conduct. Political parties also sometimes find it difficult to handle the officials whom they have nominated, but their avenues of control are far superior to those of the voters. Political parties may threaten political death, the withdrawal of patronage rights, refusal of campaign support, impeachment, and even in the last analysis business boycott.

The record of political parties in this respect leaves something to be desired. We accord to ourselves the dubious and not deserved honor of having a monopoly on political bosses and political machines.[6] "Honest graft" thrives in our midst as if this were its native habitat. Yet the situation might be worse. After all the tales of graft have been recited, very few would proclaim such a condition to be the rule in government rather than the exception.[7] Moreover, we have made gradual improvement through the years, despite discouraging relapses which plague us now and again. Not all of the credit for what we enjoy belongs to political parties, but they have contributed appreciably in certain instances.

[5] Approximately one fourth of the states do not permit their governors to succeed themselves in office immediately. There are cases where local officeholders are not eligible to succeed themselves.

[6] American writers have frequently asserted that political bosses are peculiar to the United States. Actually they are to be found in several of the Latin-American countries, in China, and elsewhere.

[7] Now and then a state or a city controlled by a boss or group is almost completely venal, but such regimes do not endure beyond a few years. The fact that the Tweed Ring, the Gas Ring, the Long machine, and other similar exemplars of corruption are given places of notoriety indicates that they are the exception rather than the rule. If the general condition were one of graft, then it would be the periods of reasonable honesty which would receive the publicity and be regarded as so colorful. That is not to say that there is not a certain amount of corruption during ordinary times, but it is not so widespread that it characterizes the system.

4. Stirring Up Interest among the Voters The most apparent activity of political parties is that of bringing out large numbers of voters on election day. In order to gain control of the government a political party must win a plurality of the votes which are cast; lest there be a slip-up a party wants as many voters out as possible—that is, as many as possible of those who are likely to support its slate. No political party is interested in large numbers of voters as an abstract principle; the big thing is winning the election, which requires getting out more voters than the other party. If an election is lost, the entire battle is lost, for every act of the party in the last analysis is judged by the results on election day. There is nothing sadder than a defeated party. The atmosphere surrounding its headquarters is more somber and depressing than mere words will indicate; it has little fuel to keep the fires burning until the next election; its task of enlisting popular support is usually a difficult one. In the last analysis there is never a valid excuse for losing an election, for as Boss Croker once clearly put it: "He who excuses himself accuses himself." Consequently it is not strange that even a party which is in the saddle and seems assured of continued support will expend considerable effort in campaigning. This expenditure of energy and money—and both are required in great amounts—may turn out to be unnecessary, but it is never possible to tell exactly *until the votes have been counted.* Then, if the campaign has fallen down, it is too late to retrieve victory; whereas if the party has been returned to power, any surplus expenditure of time and funds may be charged up to insurance or party defense.

Techniques Employed to Bring Out the Vote To achieve their end, political parties make use of all sorts of techniques. Meetings of one kind and another are scheduled throughout the land. Monster rallies will be put on in the largest auditoriums of metropolitan centers, with a galaxy of imported speakers, elaborate decorations, and varied publicity. In smaller places there will be less ambitious rallies, with second-rate celebrities, who are on a barnstorming circuit, appearing with local political bigwigs. Finally, there are the almost countless neighborhood meetings in which the party workers and the voters can see the local candidates under informal circumstances.

Public assemblies are supplemented by parades, during which the candidates greet the multitudes lining the streets, and brass bands jazz up the popular interest. All sorts of publicity make it difficult for the voter or indeed anyone who leaves his inner sanctum to lose sight of the approaching election. There are large and small placards, banners with flaring lettering, newspaper-display advertisements, personal cards, pamphlets, badges, ribbons, automobile stickers, lithographs, letters, and a hundred and one other devices to attract attention. Finally, there is the personal contact which the fieldworkers of the party carry on so vigorously. Personal visitation, telephone calls, the intervention of business associates and friends, may all be used to reach the individual voter during the height of the campaign. On election day a tally is kept of those who vote, so that as the day wears on party workers can telephone those who have not put in an early appearance. Automobiles furnished by the party are available to transport aged and infirm voters to and from the polls.

The Record of Parties in Stirring Up Interest There is some difference of opinion as to how effectively political parties perform this function of stirring up interest in public affairs among the voters. Much of the effort is of the "ballyhoo" variety; in many instances the aim seems to be that of arousing emotions rather than imparting information or advancing logical arguments. The sensational character of some of the campaigning has more in common with the circus than with the serious realm of government. Moreover, there is not uncommonly evasion of issues and current questions, rather than a frank attempt to meet them.

In defense of the political parties it must be stated that the lethargy and the political ignorance among great masses of legally qualified voters is vast. Sensationalism seems to be necessary to attract large numbers of voters. Many will turn out for fanfare, entertainment, and rabble-rousing mudslinging, while a relatively small number will listen to serious attempts to present political issues. Were it not for the Herculean efforts of political parties, many observers believe that a very small percentage of voters would turn out on election day. On the other hand, critics assert that the hordes of those who respond to the showmanship, below-the-belt attacks, and irrational arguments of political parties on campaign have no contribution to make when they do cast their ballots.

Whatever effect their efforts may have, political parties take this function seriously and bend every effort toward the waging of a vigorous campaign.

Nonpartisan Elections In view of the failure of political parties to put up superior candidates in many instances, their insistence on straddling the fence, and the superficial character of their attempts to discuss public questions, a good many public-spirited citizens have urged the abandonment of the party system and the substitution of nonpartisan elections. Very little has been done in this direction in the national arena. However, in state and local spheres the efforts of the proponents of nonpartisanship have been fairly successful, at least as far as formal abolition of the slates of political parties goes. Something like half of the cities of the United States nominally conduct their elections on a nonpartisan basis;[8] Minnesota and Nebraska specify nonpartisan choice of the members of their legislatures; California, Idaho, Montana, and North Dakota elect their judges under such a plan. It is maintained by the advocates of this system that the rather meaningless introduction of national parties and national issues into state and local areas is ruled out under an arrangement which does not permit party affiliation to be indicated on the ballot. Moreover, better chances are supposedly given to candidates who have superior qualifications but would not bend to the discipline frequently imposed by political parties. Political dishonesty, opportunism, and graft are minimized if not abolished by nonpartisan elections, it is argued.

Evaluation of Nonpartisan Elections Thus far we have had no definitive evaluation of the actual results achieved by nonpartisan state and local elections and hence it is difficult to assess their practical significance. The mayor of Buffalo has depicted the results in that city in the most glowing terms;[9] if his description is not an overstatement and similar accomplishments could be expected in other political areas, an excellent case could be made for the plan. However, in other places where nonpartisan elections have been tried, the results have not been impressive. Reports from

[8] Some 862 out of 1,686 cities with more than 5,000 inhabitants elect councilmen on at least a nominal nonpartisan basis.

[9] See T. L. Holling, "Non-Partisan, Non-Political Municipal Government," *Annals of the American Academy of Political and Social Science*, Vol. CXCIX, pp. 43ff., September, 1938.

Boston and Omaha leave little room for doubt that political parties have continued in control despite the formal provisions.[10] Pennsylvania and Iowa, after experimenting with nonpartisan election of judges, decided to go back to the traditional system. There is considerable evidence that nonpartisanship is often observed in a purely nominal manner and that political parties actually manage to function behind the scenes. If political parties put up slates of candidates, furnish their supporters with sample ballots which serve as guides in marking the official ballots, and after election command the allegiance of the officials chosen, it is difficult to see what gain has been made.

PARTY MEMBERSHIP

Formal Requirements Inasmuch as political parties exist to a large extent outside of the Constitution and laws of the United States, the rules relating to membership are ordinarily formulated by the parties themselves though state laws may have the final say. In no case are they such as to eliminate large numbers of prospects, except for the Democratic party rule in the southern states regarding Negro membership. In general, no formal step has to be taken in order to acquire that membership; nor is the payment of dues essential. An age of twenty-one years is ordinarily specified; it is expected that the members will have lived in the territory long enough to justify voting, and that they will be citizens of the United States. But younger citizens are enrolled in Young Republican and Young Democratic organizations, while there are cases in which newcomers and even aliens have taken an active part in party affairs. Thus it may be seen that membership in a political party in the United States is a rather tenuous affair. No credentials are furnished to ordinary members; no complete membership lists are kept; it is even difficult to state the exact number of members that a party has.[11]

Factors that Determine Party Affiliation Comparatively few Americans select their political party after a careful weighing of

[10] V. Rosewater, "Omaha's Experience with Commission Government," *National Municipal Review*, Vol. X, pp. 281-286, May, 1921, and D. Stoffer, "Parties in Non-Partisan Boston," *ibid.*, Vol. XII, pp. 83-89, February, 1923.

[11] Party workers do take polls to determine party affiliation. Some states require declaration of party affiliation in connection with registration. Election results are perhaps the best indication of party strength.

records, issues, and leadership. To a large extent Democrats and Republicans are born, not recruited—in other words they hold their political persuasion because their fathers displayed such loyalty. Certainly there is nothing very rational about such a basis for political affiliation, but it is probable that it accounts for, or at least largely enters into, the party stands of a majority of people. Residence also plays a determining role in large numbers of cases. Many residents of the North who move to the South find it desirable to forget their Republican antecedents and take on the Democratic mantle, for otherwise they more or less lose their votes.[12]

Racial background may have a good deal to do with party affiliation or it may enter in very slightly. It is, of course, a truism that the conventional Irishman is a Democrat. However, those of German, Scandinavian, or English origin may belong to either party. Occupational associations often have a good deal to do with political relationships, although there is no real group solidarity. However, members of the National Association of Manufacturers are much more likely to be of Republican persuasion than Democratic; likewise the members of the C.I.O. tend toward the Democratic party. It is not uncommon to have shifts on the part of racial or occupational groups. Thus the Negroes, who long were traditionally Republican, became strongly Democratic during the early 1930's.

Independents At one time in our history almost all of the voters aligned themselves with one party or the other—indeed one could scarcely be respectable without being a Democrat in the Deep South or a Republican in Maine or Michigan. Increasingly insistence upon such party ties has broken down, and consequently large numbers of persons now regard themselves as independent of any party. If they like the Republican candidates in a given election, they throw their support toward that party; if they prefer the Democratic standard bearers, they vote that way. If everyone turned independent, political parties could of course not operate. However, one can expect that the majority of the people will remain party adherents, thus providing sufficient raw material for

[12] Of course, Republicans may cast their votes in the final elections, but these are so unimportant that less than 10 per cent of the voters sometimes bother to turn out. The actual selections are made at the Democratic primaries; hence if one wants his vote to count, he must participate in those primaries.

continued party existence. A sizable independent vote puts the parties on their good behavior—they know that the independent vote may swing the election and therefore they woo that vote.

Action from Within Against such a point of view must be placed the declaration of keen observers, who maintain that real improvement is only possible as a result of action from within. If people who have high political standards withdraw to a position of independence, they lose their right to criticize or at least the party ceases to pay any attention to their opinions. Moreover, such action on the part of those who want improvement leaves the party management to those who are satisfied with graft and incompetent public officials.

Pros and Cons of Political Independence It is difficult to weigh the practical advantages and disadvantages of political independence. After high-minded persons have worked within a party for years with no apparent results and are dealt with in a high-handed and even insulting fashion by party leaders, it is not strange that they decide to try independence. Moreover, despite the assertion that all worthwhile improvements come from action within a group rather than from criticism directed from without, there is evidence that large-scale independence which places such voters in the position of holding a balance of power has had beneficent results in certain instances. The recent trend in the direction of a large independent vote is one of the more interesting current developments; it will be well worth watching to see where it eventually leads.

THE BIPARTY VERSUS THE MULTIPLE- OR SINGLE-PARTY SYSTEM

Two-party and Multiple-party Arrangements The United States and England [18] have traditionally been supporters of the two-party system, while the European countries prior to the fascist era almost invariably followed the multiple-party plan. The strong devotion of both the United States and England to two parties has been commented on repeatedly by both journalists and academicians and during the critical period following 1939 was often iden-

[18] The Conservative and the Liberal parties long dominated the English political scene. Then following the First World War the Labor party came in for serious reckoning. For a time it seemed that the field would be shared among the three parties; then the Liberal party lost strength until it could be classed as a minor party group.

tified with the maintenance of democratic institutions by those countries. Conversely the multiple-party system was referred to again and again as an important cause of the downfall of the Weimar Republic of Germany, the Third Republic of France, and the democratic government of Czechoslovakia.

Advantages of Several Parties Theoretically there is a good deal to be said in favor of a party system which will give room for the expression of several points of view, for as we have already pointed out, it is not very satisfactory in this day of complex public questions to answer every query with a straight "yes" or a categorical "no." Practically there is danger when the biparty form is abandoned of going too far in multiplying political parties. Three or four parties are one thing; a dozen or twenty parties are quite another.

The Bi-party and the One-party System During the decade preceding 1945 there seemed more immediate likelihood of substituting the one-party system rather than a multiple-party arrangement for our present two parties. Many of the countries of the world had followed such a course;[14] under a totalitarian type of government such a step followed automatically. Instead of being more or less outside of the government, as are our two parties, the one party is invariably intimately bound up with the government. Indeed the association is so close that it is almost impossible to say what is party and what is government. No one can doubt that a one-party system would be more pervasive in its influence, ruthless in its operations, and more costly. Its positive contributions would at best be uncertain. According to the fascist logic, the advantage of the one-party system is that it eliminates "needless and destructive" argument, concentrates the interests and energy of the people on one goal, and hence makes for the efficient accomplishment of that chosen end.[15] Our position is, of course, that opposition and discussion are productive of a wise governmental policy and that

[14] Sweden, Switzerland, Argentina, and Chile clung to their multiple-party systems; the United States and England to two parties; elsewhere the one-party system was the rule among the well-known countries.

[15] For a more detailed treatment of the role of the single parties in the totalitarian government, see J. K. Pollock, *Government of Greater Germany*, rev. ed., D. Van Nostrand Company, New York, 1939; and Harold Zink and Taylor Cole, eds., *Government in Wartime Europe and Japan*, Houghton Mifflin Company, Boston, 1942.

the lack of them leads, eventually, to a sterile and retrogressive state.

Selected Bibliography

Binkley, W. E., *American Political Parties: Their Natural History*, Alfred A. Knopf, New York, 1943.

Brogan, D. W., *Government by the People*, rev. ed., Harper & Brothers, New York, 1944.

Brooks, R. C., *Political Parties and Electoral Problems*, 3rd ed., Harper & Brothers, New York, 1933.

Bruce, H. R., *American Parties and Politics*, 3rd ed., Henry Holt & Company, New York, 1936.

Davis, J. W., *Party Government in the United States*, Princeton University Press, Princeton, 1929.

Fine, N., *Labor and Farmer Parties in the United States, 1828-1928;* Rand School Press, New York, 1928.

Herring, E. P., *Politics of Democracy; American Parties in Action*, W. W. Norton & Company, New York, 1940.

Hesseltine, W. B., *The Rise and Fall of Third Parties*, Public Affairs Press, Washington, 1948.

Holcombe, A. N., *The Political Parties of Today*, Harper & Brothers, New York, 1924.

——, *The New Party Politics*, W. W. Norton & Company, New York, 1933.

Kent, F. R., *The Democratic Party: A History*, D. Appleton-Century Company, New York, 1928.

——, *The Great Game of Politics*, rev. ed., Doubleday, Doran & Company, New York, 1936.

Key, V. O., Jr., *Politics, Parties, and Pressure Groups*, rev. ed., The Thomas Y. Crowell Company, New York, 1947.

Lazarsfeld, P. F., and others, *The People's Choice; How the Voter Makes up His Mind in a Presidential Campaign*, Duell, Sloan & Pearce, New York, 1944.

Logan, E. B., ed., *The American Political Scene*, rev. ed., Harper & Brothers, New York, 1938.

McKenzie, C. W., *Party Government in the United States*, rev. ed., The Ronald Press Company, New York, 1939.

Merriam, C. E., *Political Power*, McGraw-Hill Book Company, New York, 1934.

Merriam, C. E., and H. F. Gosnell, *The American Party System,* rev. ed., The Macmillan Company, New York, 1940.

Myers, W. S., *The Republican Party: A History,* rev. ed., D. Appleton-Century Company, New York, 1931.

Odegard, Peter, and E. A. Helms, *American Politics—A Study in Political Dynamics,* rev. ed., Harper & Brothers, New York, 1947.

Peel, R. V., and T. C. Donnelly, *The 1928 Campaign,* Richard R. Smith, New York, 1931.

—, and —, *The 1932 Campaign,* Farrar & Rinehart, New York, 1935.

Penniman, H. R., *Sait's American Parties and Elections,* rev. ed., D. Appleton-Century Company, New York, 1947.

Salter, J. T., *Pattern of Politics,* The Macmillan Company, New York, 1940.

—, ed., *The American Politician,* University of North Carolina Press, Chapel Hill, 1939.

Schattschneider, E. E., *Party Government,* Farrar & Rinehart, New York, 1941.

9 · *The Organization of Political Parties*

Political parties in the United States are organized into such regular divisions that they form almost a hierarchy. Their pyramidal structure may be examined from the top down or from the bottom up, depending upon one's point of view. Certainly, to some extent the national committees and national chairmen constitute the apex of the pyramid and are the most important parts of the system. They have much to do with planning and executing the presidential campaigns; they raise and disburse large sums of money, even subsidizing some of the state organizations; and they attempt to co-ordinate the efforts of the state and local organizations, especially in presidential years, to such a degree that solidarity is the constant watchword. Nevertheless, there are fundamental objections to beginning at the top and proceeding downward. In the first place, such a course is an admission that the political-party system is not of the people and consequently does not comport with the principles of a democracy. In the second place, the actual work of a party is carried on at the "grass roots," so to speak—not with the members of the national committee in Washington. Elections may be planned, but they are never won at national headquarters. The final decision is made at the polls, which are located in local units of government and around which operate the local party organizations.

Finally, the entire structure leads from the bottom to the top as far as the formal selective process goes. The party members choose the local party officials; these latter select the state officials; and the state party organization in turn names the men who represent that state on the national committee. True enough, the scheme may not always work out in practice as it is supposed to, because political bosses and machines enter the picture to usurp the people's

authority. Even if this is the situation, it may be pointed out that the perversion rarely if ever goes beyond the state—that is to say, we have never had a national political boss. Hence it is the state boss who names the local party officials and the national committeemen in some cases, but never the national committee which picks out the state and local officers.

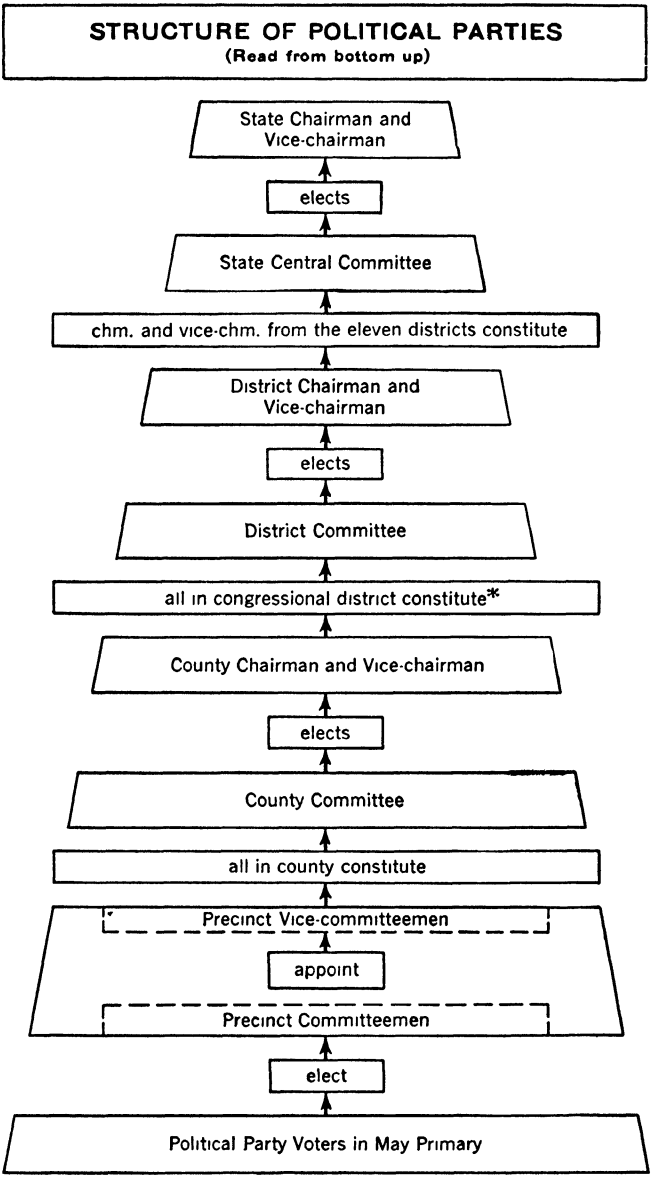
Political parties are in general organized into three divisions: local, state, and national. The organization varies somewhat from state to state, depending upon local tradition, state law, and degree of urbanization, but the general outline is the same. We shall now proceed to a more or less detailed examination of the elements of these three large divisions.

LOCAL ORGANIZATIONS

The Precinct The unit which may be considered basic in the whole organizational system of political parties is ordinarily designated the "precinct," although occasionally another term such as "division" [1] will be used. Precincts, of course, have definite geographical area, but they are primarily based on population or voters rather than upon square miles. In rural areas, where population is sparse and distances consequently great, precincts may include only fifty or one hundred votes—sometimes the number is even smaller. But in towns and cities they are ordinarily based on at least three hundred votes, while six to eight hundred-vote precincts are commonplace, and precincts with over a thousand are occasionally encountered.

The Precinct Committeeman Precincts sometimes have committees to advise in carrying on the party work, but the main responsibility is almost always placed on the shoulders of one person. This official may be called a "precinct committeeman," a "precinct captain," or by some other name, but his functions are substantially the same—they may be succinctly and accurately summarized as follows: "getting out the vote for his party." No matter how badly he fails by every other canon or how ugly his disposition may be or irrespective of the methods he uses, if he can carry his precinct year after year by handsome margins for his party he is considered highly successful. This official is usually elected by the members of the party for a two-year term at the biennial direct

[1] In Philadelphia the term "division" is used.



* If only one county in district, the county committee serves also as a district committee.

Courtesy of Dean P. S. Sikes.

ORGANIZATION OF POLITICAL PARTIES IN INDIANA

primaries, but in New York City he is appointed by the district (equivalent to a ward in many cities) captain and is responsible to that worthy. Despite the great importance attached to the office, there is frequently little interest displayed either on the part of candidates or voters, with the result that the actual selection may be made by a political boss.

Importance of Precinct Committeemen Nevertheless, despite the lack of public interest that may surround the precinct committeeman in many instances, his role in the American political system can scarcely be overemphasized. All too often this has not been recognized, with the result that bossism has been permitted to creep in, expensive failures have followed, and adequate standards of political morality have been lacking. Civic organizations have often focused their attention on the governor of a state or the mayor of a city on the supposition that, if competent and high-minded persons can be placed in those positions, great improvements will result. Actually it is exceedingly difficult for even the best mayor or governor to give a good account of himself unless he has the proper party backing. At times this foundation may be the people. But in the states as well as in most cities it is the party to which the governor or mayor must look. If the precinct committeemen are bad, the entire system will probably be vicious. This is true either if a boss has named them or if the voters have been so indifferent that unworthy persons have wormed their way in. Any basic reform either in local or state government and indirectly in the national government depends in large measure upon the calibre of the people who hold the position of precinct committeeman.

Work of Precinct Committeemen The exact activities of a precinct committeeman [2] will depend in large measure on what kind of a precinct he has to cultivate. Of course, in every case, his primary goal, as we have already pointed out, is to carry his precinct by a sizable plurality for his party. But the means which will bring about that end vary a great deal from place to place.

Rural Precincts In rural areas the committeeman usually

[2] For some very vivid characterizations of precinct committee, or "division leaders" as they are called in Philadelphia where the study was made, see J. T. Salter, *Boss Rule: Portraits in City Politics*, McGraw-Hill Book Company, New York, 1935.

goes around before election day from farm to farm or it may be that he will be able to contact his voters at a neighborhood gathering or at the elevator. Since the rural vote tends to be generally unaffected by social diversions or personal assistance, the committeeman is not expected to put on an elaborate program. It is probable, however, that there will be applicants for minor positions on the public pay roll whom the rural committeeman must interview and decide whether or not to support.

Well-to-do Residential Precincts In more settled areas the work of the precinct committeeman varies, depending upon whether the precinct is well-to-do residential in character, inhabited by large numbers of poor people, or located in a foreign section. In the case of substantial residential precincts the duties of the committeeman are not onerous except around election day. During the course of the campaign he or his assistants make a door-to-door canvass of the voters, concentrate on those who are wavering between the parties, schedule a number of neighborhood meetings at which the local candidates can address the voters, and provide transportation for those who desire it on election day. Social affairs are not necessary; nor does a great deal have to be done in personal service for the inhabitants, beyond getting an occasional traffic ticket "fixed" or approving the application of a youth for a public job. This type of precinct committeeman has a full-time job with some business concern, has his own business, or is engaged in a profession. He usually has no expectation, indeed no desire, for an ordinary place on the public pay roll, although he may possibly be ambitious to hold an elective office at some future time.

Congested Urban Precincts The most interesting and busiest precinct official is found in the congested areas inhabited by the poor and those of foreign birth or extraction. These areas play an especially important role in winning elections and are the strongholds of political bosses and machines.[3] The voters of these precincts are very realistic in their attitude toward politics; they know the rewards of victory, and they expect a great deal of attention and service in return for their votes. The officials who have charge of these precincts for the two major parties tend to be full-time workers on the job—at least the representative of the party in power

[3] See H. F. Gosnell, *Machine Politics: Chicago Model,* University of Chicago, Press, Chicago, 1937.

gives this work his full attention. Often he is so engaged in cultivating the voters of his precinct that he cannot leave it even on holidays, Sundays, at night, or in the summer, except when precinct business calls him to the city hall, a police station, or a local court.

Friend of the People The people of the precinct are in and out of his house every day, while he visits them at their homes, their places of business, on the streets, or at their social events. He attends the weddings, the funerals, the christenings—congratulating, condoling, kissing, and bearing gifts. He visits the sick and provides medical care if they are unable to afford such a service. He assists the very poor with food baskets on holidays, with coal, and especially with assistance in getting adequate and prompt relief from the public welfare department.[4] In the old days before public employment offices were set up on a large scale, he did yeoman service in securing jobs for his people in private and public employment; but at present he confines himself pretty largely to obtaining jobs on the public pay roll.

Varied Activities When the people of the precinct get involved in a criminal offense, it is the precinct committeeman whom they usually think of and call first after being taken to the police station. He goes immediately to see what can be done to relieve the situation—perhaps he can persuade the police to drop the charges, usually bail may be obtained, legal assistance can be provided, and finally the judge who tries the case may be approached with the request that the accused be given a suspended sentence or treated leniently. Social events of one kind and another—oyster suppers, dances, bridge parties, excursions for tired mothers, outings for youngsters—may be scheduled during the course of the year. All in all, the precinct committeeman in one of these crowded precincts is a very busy man, not only on election day but all of the time; indeed he is so engaged in furthering the interests of his party that he has no time to earn a livelihood for himself. Inasmuch as he is almost never a person of means and the party funds are seldom adequate to permit more than a modest grant of $25 to $100 at election time, the precinct committeeman, if of the

[4] In the days prior to 1933 a great deal of relief was given directly, but now public funds make party efforts unnecessary beyond the assistance noted above.

party in power, ordinarily holds a minor job on the public pay roll. One may wonder how he can find the time to perform the duties of this job when he does not have the time to earn a living in a private capacity. The answer is that the public job is only a sinecure requiring little or no effort beyond that of collecting pay.

The Ward In urban areas where the population is large, the next step in the political organization is ordinarily the ward. Wards vary in size, even in the same city, but usually include from half a dozen to twenty precincts. The precinct committeemen themselves make up the ward committee and either choose from their own number a ward leader, or accept the choice of higher party officials, to have general oversight of the party activities in the ward. In small cities the wards may have little or no consequence so far as the political organizations are concerned, but in the largest cities they are usually distinctly important. The ward leader coordinates and oversees the work of the precinct committeemen, assists them in securing jobs on the public pay roll for their worthy helpers, apportions money which comes from the central party treasury, and otherwise carries on the work of the party. If he represents the dominant party, the ward leader frequently holds a fairly lucrative public office or position; he may be a member of the city council, or a department head, for example.

The City Above the ward organizations is the city-wide structure, headed by a central committee and a city chairman. Each ward sends one or two representatives to the central committee—usually the ward leader is one—which will run from ten to sixty or so members, depending upon the population of the city. The central committee either elects a chairman or accepts the chairman named by the political boss; in either case the chairman is likely to be a busy man. If he is the choice of the central committee the city chairman generally depends heavily on that committee for the determination of policies and counsel; otherwise his relations with it are likely to be formal and his chief responsibility is to the boss who named him. Central committees designate secretaries, treasurers, and sometimes executive committees to carry on much of the day-to-day work. It is the function of the city-wide organization to plan the campaign preceding an election, to bring about solidarity within the party, to raise money, and to direct in general the work of the party.

Much of this responsibility may be entrusted to the chairman, the treasurer, and perhaps to the executive committee if the central committee itself is unwieldy. The chairman frequently devotes a considerable portion of his time to the disposal of patronage. Applications for public jobs come up from the precinct through the ward to his office and have to be acted upon finally there. Extensive files of these applications are often maintained in his office, for the number of job seekers are usually far more numerous than the jobs available. Precinct and ward leaders do not like to refuse to approve an application lest they make a political enemy; so they often give their signature, knowing that the bearer will not in the end get a job. Only in those cases in which the local leaders go personally to the city chairman and implement their written endorsement will a job actually be forthcoming.

The County In rural areas the next level above the precincts is usually the county organization, although at times an intermediate district is recognized. Each precinct is entitled to one or two seats on the county committee—it is probable that the precinct committeeman if not automatically the holder of a seat will be designated for that purpose. The county committees, which may have from fifteen or twenty members to a hundred or more, elect a county chairman, a vice-chairman, a treasurer, a secretary, and in certain cases name an executive committee. The committees meet at stated intervals, but are especially active during election years, when they draw up plans for the party activities, raise money, and co-ordinate the campaign. The county chairman is usually an important figure in his own bailiwick at least, for he not only is expected to do much of the actual work decided upon by the committee, but he has a great deal to do with the distribution of patronage. Applications for jobs clear through his office and are either finally acted upon in the case of county patronage or passed on to the next higher level in the case of state or federal patronage.

City-county Relations Inasmuch as party organization varies somewhat, depending upon whether the territory involved is urban or rural, it is somewhat confusing to pass from the basic precinct, common to both, to the state level. In most cases there is no city to complicate matters and hence the precinct leads to the county and the county on to the state. In small cities, little or no attention may

be given to political organization beyond a more or less informal setup for local elections. In some states it is provided that the precinct committeemen shall constitute the city committee where they are located within an urban area and at the same time hold seats on the county committee.[5] In very large cities a special provision has to be made for integrating the city and the county organizations. Here the city organization may far outshine the county organization and carry on relations directly with the state headquarters of the party. In other instances the city committee will designate a certain number of representatives to serve on the county committee. In New York City there is the curious arrangement which omits a city committee entirely. Tammany Hall,[6] for example, is the Democratic organization in one of the five counties over which New York City is spread; each of these five counties has its own committee and chairman. In making decisions relating to city-wide matters, the picking of a mayoralty candidate for example, it is customary for the five county leaders to confer.

The District The final local division of party significance is the district, usually coterminous in boundaries with the congressional district. Each county committee within such a district sends one or two representatives to a district committee, which chooses a chairman and other officials according to needs. The district organization is important in connection with congressional elections and to some extent in the disposal of federal patronage, especially postmasterships. The districts may or may not be a direct link between the counties and the state party structure. In other words, the district organizations are sometimes maintained primarily for the purpose of handling congressional elections and patronage and occupy a status somewhat apart from the main hierarchy. Again the districts may be an integral part of the system, as they are, for example, in Indiana, where the district chairmen constitute the state committees of their parties.

[5] Indiana makes such a provision. Hence the precinct committeemen in Indianapolis serve in a dual capacity: as members of the city central committee and as members of the Marion County committee. The only difference between the two committees is that the latter includes committeemen from the rural section of the county.

[6] Strictly speaking, Tammany Hall is a Democratic club, but it is usually regarded as synonymous with the Democratic party in Manhattan.

STATE ORGANIZATIONS

The State Committee Each county or each district, as the case may be, is entitled to representation on the state central committees of the two major political parties. If counties are the basis, some consideration is often given to their respective political importance, so that very populous counties receive several seats while small counties are assigned only one. Districts are supposedly equal in population [7] and consequently receive the same representation on the state committee. The committeemen from the counties and districts may be especially chosen for that purpose or they may be more or less automatically entitled to membership because they are district or county chairmen. In any event the members of the state committee are for the most part ranking members of the party from various sections of the state, except in those states dominated by political machines, in which case the state committeemen may be largely automatons. The size of state committees depends to some extent upon the population of the state, but even among states of the same population there may be lack of uniformity. Fairly populous states may have small committees of fifteen or so, while smaller states may provide for twenty-five or more members. State central committees of fifty to a hundred or more are to be encountered.

State central committees perfect an organization which includes a state chairman, a secretary, a treasurer, one or more vice-chairmen, and, if the committee is sizable, an executive committee. They hold stated meetings every year or oftener, but are, of course, especially active in an election period.

Work of a State Committee The responsibilities of a state committee are determined in large measure by the independence of its members. If they are influential members of the party in their own name, it is probable that the deliberations of the committee will assume distinct importance; if they are figureheads put up as

[7] Actually congresisonal districts vary considerably in population, although the Constitution commands that they shall be equal in that respect. Certain congressional districts in Chicago have approximately six times the population that downstate Illinois districts sometimes can claim, because there has been no reapportionment in Illinois since 1901.

a front by a political boss or machine, their proceedings will be cut and dried and without real vitality. A large committee is less able to function effectively than a smaller one, with the consequent necessity for those that are comparatively large to set up an executive committee which does most of the work. Something depends upon the aggressiveness and resourcefulness of the person named as state chairman—it is to be expected that a cautious chairman will lean far more heavily on his committee than will a chairman who considers himself the state party leader. In general, a state committee does for the state about what the local committees do for the lesser units of government. Policies are discussed and adopted; a state headquarters is set up; decisions are made about tactics, the expenditure of money, and the waging of the campaign; arrangements are made for the state convention; relations with the national party organization are canvassed; and the disposal of patronage, if any, is considered.

State Headquarters Each of the two major parties maintains a permanent headquarters, usually in the state capital, although occasionally convenience will indicate a larger city.[8] Suites may be rented in an office building or space may be secured in a hotel where there is a lobby for visitors to loaf and where there are other facilities not ordinarily provided in an office building. Although the state chairman is in and out of these headquarters, he is likely to be a man of affairs with other demands on his time and hence unable to devote full attention to political duties. The secretary is often expected to give all of his efforts to party work and may be paid a reasonably good salary for such service or be maintained indirectly through appointment to a public position carrying a good salary but few duties. The treasurer, drawn from the ranks of business men or financiers, gives only such time as he can spare to his party duties. During the heat of a campaign numerous public-relations agents, clerks, receptionists, accountants, stenographers, research workers, and even detectives are attached to headquarters.

The State Convention Every two years most states witness the holding of state conventions by the major parties. Delegates, elected by the party members at primaries or indirectly by caucus

[8] For example, the state committees of New York maintain offices in New York City.

or committee, pour into the state capital or some other designated city [9] to spend two or three days attending a mammoth convention. Several hundred delegates, in certain states a thousand or more, party officials, candidates for office, members of families of party leaders, newspapermen, and throngs of the curious will overflow a large auditorium. Preliminary arrangements have been made by the state committee, which is, of course, interested in seeing that the convention does not get out of hand. Committees on platform, credentials, order of business, and sometimes other matters are set up, with each district or county being represented thereon.

Convention Activities The state committee designates temporary officers to act until a permanent organization can be effected. The temporary chairman ordinarily delivers a ringing address in which he praises the accomplishments of his own party to the sky. These state conventions adopt a platform, already tentatively worked out by the state committee and prominent party leaders. Inasmuch as there is comparatively little practical importance attached to the platform, which is confined largely to self-congratulation and castigation of rivals and which is careful to make its commitments vague albeit phrased with a flourish, there is frequently not too much interest shown by the delegates. If a presidential election is in the offing, the convention will display much more intense interest in the choice of the delegates to the national convention, provided, of course, it is authorized to make such a selection.[10] At one time state conventions nominated the various party candidates for public office; and this event marked the climax of the convention, for delegates almost invariably became wrought up over conflicting claims and merits. The direct-primary system has shorn conventions of much of this authority. However, some states reserve to the party conventions a share of the work, while in a few instances there has been a considerable trend toward reinvesting party assemblages with this exciting duty.[11]

[9] Some states, such as Ohio, invariably use one city which is outstanding, while others, such as New York, move the conventions around from city to city.

[10] Some state conventions choose all delegates; others name only the delegates at large.

[11] Indiana and New York may be cited as examples of states that after experience with the primary have restored some of the nominating authority of party conventions.

NATIONAL ORGANIZATION

National Committee The two major parties each maintain national committees of approximately one hundred members, made up of two committeemen, a man and a woman, from each state, together with representatives of certain territories.[12] National committeemen are nominally elected by the national conventions of the parties, but they are actually chosen by the state organizations. Every four years each state delegation presents two candidates to be elected national committeemen by the national convention. The state delegations may have the power to decide such nominations themselves; they may be required by state law to designate those who have been chosen by direct primary; they may lean heavily on the state committee for advice; or they may take their orders from a political boss or machine. The honor and power attached to membership on a national committee is by no means insignificant; hence there is no lack of candidates despite the absence of direct financial remuneration. The national committees meet once each year and during presidential election years schedule other meetings for special purposes. Since the committees are rather large for detailed discussion, and since it is not feasible to call together at frequent intervals committees of widely scattered membership, executive committees are created and officers designated to take over much of the work.

Executive Committee of the National Committee There is no fixed rule which determines the size and composition of the executive committee of a national committee. If the times seem to point to a certain size or if the logical candidates are few or numerous, the national committee will act accordingly. The national chairman, national secretary, national treasurer, and at least one of the vice-chairmen almost automatically hold membership, and outstanding leaders who live in the East or Middle West are more frequently included than those who live at a greater distance in the far West or Southwest. As a rule, the total membership does not fall under ten nor exceed fifteen. Meetings of this subcommittee are not given undue publicity, but it is known that they are of

[12] The Democratic National Committee is slightly larger than the Republican National Committee because the Democrats permit more territorial representation.

frequent occurrence, especially in the year when a President is to be chosen. Most of the important decisions originate from this inner group, although they may have to be ratified by the entire committee as a matter of form.

Other Subcommittees In addition to the executive committee the national committee maintains other subcommittees which include both national committeemen and influential party leaders drawn from the outside. The finance committee is one of the most important of these and is given careful attention, for the problem of finance is always present. The treasurer of the national committee, of course, works in close conjunction with this subcommittee, which usually includes in its membership men who are both well-to-do and active in party affairs. A congressional committee is charged with integrating the efforts of the national committee with the interests of congressmen, especially those who are seeking re-election.

Officers of the National Committee The national committee has several officers who are often in the limelight, together with others who are not so well known. The national chairman of the party in power enjoys a particularly commanding position in the public eye. Strangely enough, despite the fact that he heads the national committee, he is not actually chosen by it;[13] rather that privilege is through courtesy reserved to the party nominee for the presidency. The national chairman presides over the national committee, names the members of the executive committee, is at least in nominal charge of the national headquarters, and has much to do with the conduct of party affairs. He may be aided by an executive assistant who is a full-time salaried employee. The secretary of the national committee keeps the records of the committee and has much to do with the conduct of affairs at national headquarters—he may spend his entire time in that capacity for several months before election day. The treasurer receives and disburses party funds and assists the finance committee in raising the funds. Then there are usually several vice-chairmen, one of whom is a woman, who may or may not be outstanding in party affairs.

[13] That is, the national chairman who manages a presidential campaign is not chosen by the national committee. However, in case there is a vacancy between presidential elections the national committee may make the choice, particularly if the party does not have a representative in the White House.

National Headquarters Both parties maintain permanent headquarters in Washington and, during a campaign, branches in two or more other large cities. Traditionally, there has been intense activity during the months before presidential elections followed by quiescence during the intervening years. A staff made up of hundreds of workers of one kind and another is recruited in preparation for an election. All sorts of activities are carried on by such subdivisions as the following: speakers' bureau, farm division, club division, publicity department, radio division, research division, foreign-language division, purchasing department, colored men's, colored women's, and colored speakers' bureaus, and labor division. Tons of literature, varying from small pamphlets to books of several hundred pages, are prepared and sent out to the state and local organizations. Truckloads of letter mail are received daily. Then after the election this huge organization is allowed to disintegrate, until only a few rooms with a skeleton staff remain. This practice is in great contrast to that followed in the totalitarian countries; indeed it is even different from the English system.

Congressional and Senatorial Campaign Committees During presidential elections the main burden of party affairs is handled by the national committee; but in between, as has been pointed out above, it has been the general practice in the past to allow the machinery to disintegrate. Inasmuch as some Senators and all Representatives are elected in the off-year elections, some arrangement is necessary to take care of their campaigns. To meet this need, Republican and Democratic congressional and senatorial campaign committees have been set up. These have comparatively little to do during a presidential election, but they are active in planning and waging campaigns during the off years. The Republicans maintain a congressional campaign committee made up of one congressman from each state having Republican representatives; these are designated by each state's party members in the House of Representatives and are formally elected by a caucus of Republican Senators and Representatives. The Democrats are a little more liberal since they permit each state, whether represented in the House or not, one seat on the committee. If there is no incumbent congressman available, a former member may be named by the chairman of the committee. Both parties also have senatorial committees, which correspond to the congressional campaign com-

mittees, except that they are composed of Senators and primarily concerned with the election of Senators.

THE NATIONAL CONVENTION

Preliminary Preparations When the national committee holds its regular meeting in December or January before the November of a presidential year, it makes preliminary arrangements for holding a national party convention. A set of temporary officers is named; the time for holding the convention is fixed; the place is determined; and a call is sent out to the states notifying them of the convention and stating how many delegates each is entitled to send. National conventions are usually scheduled for June or July, with the latter half of June and early July being favored.

Place Conventions require ample hotel accommodations, a hall with large seating capacity, and a considerable expenditure of money. Cities which can offer the first two facilities and are willing to put up a certified check for $150,000 or so send their bids to the secretary of the national committee. Occasionally a committee will decide on Houston, San Francisco, or Denver,[14] but in general there is a disinclination to go beyond the Mississippi River or the Mason and Dixon line. Chicago, Cleveland, St. Louis, and Detroit are favorites because of their central location, convenient transportation facilities, and reasonably adequate hotel accommodations. New York City, Philadelphia, Baltimore, and Boston are also popular.

Apportionment of Delegates For many years both the Democrats and the Republicans permitted each state to send to a national convention twice as many delegates, together with an equal number of alternates, as the state had Senators and Representatives in Congress. This method of apportionment played into the hands of more or less irresponsible elements for years, but it was not until 1912 that it displayed its weakness in a glaring form. In that year the Taft forces were able to control one national convention largely because they had the united support of the southern states which had large convention delegations but cast few Republican votes at election time. The four Deep South States of Alabama, Louisiana, Mississippi, and South Carolina had together accounted

[14] Only the Democratic National Committee has been bold enough to schedule conventions in Houston, San Francisco, and Denver.

for only 42,592 votes in 1908; yet they had eighty-two delegates in the 1912 Republican national convention. On the other hand, Pennsylvania had cast almost twenty times that number of votes,[15] but had only seventy-six delegates.

Republican Plan The experience of 1912 led the Republicans to make a change which would prevent a recurrence in 1916 and the present rule became effective in 1940. Under this system every state is given four delegates at large, together with one delegate for every congressional district casting one thousand or more Republican votes in the last general election. To recognize the loyal Republican states, an additional delegate is authorized for those congressional districts that cast as many as ten thousand Republican votes in the last general election and a bonus of three delegates is given to those states which can show Republican pluralities in the last presidential election. In those states having congressmen at large two additional delegates are permitted for each such officer, and in every case an equal number of alternates is allowed.

Democratic Plan The Democrats have perhaps never suffered so severely from apportionment difficulties as the Republicans and hence despite much discussion permitted the old arrangement of twice as many delegates as seats in Congress to continue down through 1940. A committee to study the situation was authorized in 1936 and reported a very cautious change in 1940 which allowed to those states carried by the Democrats two additional delegates. In 1948 this bonus was increased to four.

Examples Under the Republican plan, a state which has supported the party and which has fifteen seats in the House is apportioned thirty-seven seats in the Republican National Convention. If it has not backed the party enough for victory but has a substantial number of Republicans in every congressional district, it would receive thirty-four seats. If it is strongly Democratic and offers little or no Republican consolation, the apportionment is cut to only four seats. Thus it may be seen that the Republican plan gives those states which contain the party strength a distinct advantage. A state of similar congressional representation under the Democratic plan will receive thirty-eight seats if appropriately Democratic and thirty-four seats if disloyal to that party. The total

[15] Pennsylvania cast 745,779 votes for the Republican party in 1908.

number of delegates to a national convention ordinarily runs from a thousand to twelve hundred, not including alternates.

Temporary Organization Convention seats are distributed after lots have been drawn for the best locations toward the front of the hall, with all the delegates from a state together.[16] Committee assignments to the four important committees on which each state is entitled to representation: (1) credentials, (2) permanent organization, (3) rules and order of business, (4) platform and resolutions have already been worked out by the various state delegations. The temporary officials, who have been selected by the national committee, get the convention off to a start. After a roll call of the states and territories, prayer, and other preliminaries have been disposed of, the temporary chairman delivers a keynote address which is one of the high lights of the entire convention. The record of the party is praised to the very skies; the sins of the opposing party are depicted as reaching the most devastating proportions.[17]

Permanent Organization On the second day, after the committee on permanent organization has recommended a slate of permanent officers, the national convention ordinarily organizes itself on a permanent basis. There is frequently a great deal of jockeying among the several factions to get their candidates chosen as permanent chairman, secretary, sergeant at arms, and other officers of the convention. A favorably disposed chairman may recognize delegates belonging to one faction of the party while he may refuse the floor to others. The sergeant at arms and his assistants have been known to permit the friends and followers of the faction which was responsible for naming them to their positions ready admission to the convention hall and freedom of movement about the floor, despite the rules which restrict such privileges.[18] The

[16] The alternates, however, are seated in the rear of the hall unless called upon to sit for a regular delegate.

[17] Although convention speeches follow on the whole the old-fashioned, gingerbread school of bombast, a few have risen above it enough to obtain places as classics. For example, Bryan's "Cross of Gold" speech of 1896, which was in preparation two years, and Robert Ingersoll's "Plumed Knight" speech on Blaine in 1876 are now a part of the American forensic tradition.

[18] Ordinarily only delegates and alternates are permitted on the floor. Friends of each faction are supposed to content themselves with the galleries. It has sometimes been claimed, when the sergeant at arms does admit friends of

permanent organization having been effected, the permanent chairman delivers a prepared address of lengthy character which repeats a great deal of the flowery praise and the vitriolic denunciation of the keynote address.

General Atmosphere There are few more colorful and dramatic spectacles than a national party convention. A mammoth hall, elaborately decorated with flags, bunting, and party emblems, overflows on the big days with delegates and their alternates, members and officers of the national committee, other party notables, distinguished visitors, representatives of the press and of the broadcasting networks, and in so far as space permits small-fry politicians and the general public. Perhaps the most striking characteristic of a national convention is noise. The chattering of the delegates, the milling about on the floor, and the attempts of the officers to call for order provide a general undertone. Add, then, to this the stamping of feet, the clapping of hands, the vociferous verbal applause, the raucous jeering, and the grandiloquent oratory of the delegates. Even that is not all; blaring brass bands, automobile sirens, whistles, and even the lowly cowbell make for a final crescendo of sound effect. Perhaps even more strange to the eye of the uninitiated are the curious antics of the some two thousand official delegates and their alternates.

Explanations of Convention Behavior Foreign observers often express surprise at the amazing spectacle of fifty-year-old substantial citizens yelling to the capacity of their lungs, cavorting about like satyrs, and indulging in the strenuous hilarity of a snake dance. What is the explanation of such unusual behavior? To begin with, the delegates are away from the restraining influences of home; moreover, they regard a national convention as something to relieve the tedium of ordinary existence. But perhaps even more important is the necessity of having something to do. Men who have attained positions of influence in their local communities and lead more than ordinarily active lives find it difficult to sit calmly with folded hands awaiting the outcome of negotiations among the leaders of the party. The national convention is far too large and loosely organized to deliberate with any degree of effectiveness about platform planks or about the choice of party candidates.

his faction, that these are merely rowdies and ruffians hired for purposes of intimidation.

Consequently, the actual work of drafting a platform and deciding among the claims of those ambitious to be the standard-bearers of the party is largely entrusted to comparatively small groups of leaders. Until these leaders have completed their labors, there is very little for the delegates to do, other than to mark time and to engage in the colorful exhibitionism noted above.

Effect of Radio Broadcasting During the last decade there has been considerable emphasis placed upon the broadcasting of national convention proceedings. This has required certain marked changes in the conduct of conventions. Whereas under the earlier system they had followed no schedule, spending as much time on speeches and applause as the delegates desired and giving attention to the various items of business as convenience dictated, the recent broadcasting arrangements have necessitated a much more rigorous order. Millions of radio listeners soon weary of applause extending over periods of a half an hour or more because they cannot witness the dramatic spectacle which accompanies the noise. The radio networks have handled the problem to some extent by cutting off the microphones in the convention hall and switching to informal and brief comments made by well-known delegates or party officials. But even so the element of time, so costly in the case of national hookups, has necessitated a rather severe curtailment of prolonged demonstrations. Many of the delegates complain vigorously at this regimentation, but the party officials are of the opinion that the advantages to be derived from extensive radio publicity are such as to justify a revision of procedure.

The Platform Despite the fact that platforms are no longer taken too seriously, the national conventions continue to go through the motions of drafting one. The report of the Committee on Platform and Resolutions has recently been scheduled for the third day of the convention. For several months before it convenes, members of the national committee and other interested party leaders have thought about and discussed the probable contents of the party platform. Members of the Committee on Platform and Resolutions are sometimes designated well in advance of the assembling of the delegates in order that adequate time may be available for platform drafting. Hence, when the convention meets, one or more tentative platforms have usually been prepared as a basis for convention action. Nevertheless, the finishing touches and

the final compromises have to be added during the few hours between convening and the time scheduled for the report. Although little or no attention may be given to the planks of the platform after election, there is frequently bitter argument among the members of the Committee on Platform and Resolutions as to exactly what will go in and what will be left out. While there is a disposition on the part of the convention to accept the report of the platform committee without undue question, occasionally specific planks will result in heated discussion on the floor.

The platforms of the national parties, usually fairly lengthy in character, are ordinarily couched in phrases which make most sonorous reading. However, a careful dissection of the contents will reveal that the underlying philosophy is one of evasiveness. Clear-cut stands on vital questions are avoided with the greatest skill; an effort is made to please every type of citizen by inserting cleverly worded provisions which may be read according to one's basic political views. A concession to one important element of the population must be matched by a similar concession to opposing elements. As a sort of filler, the exploits and triumphs of the party during the years that have passed may be generously noted.[19]

Nominating Speeches In general, the delegates regard the events of the first three days of the convention with more or less restrained impatience and anxiously await the climax which is the nomination of a candidate for the presidency. When the convention has reached this point in its order of business, the secretary begins a roll call of the states in alphabetical sequence. As a state's name is called, a representative may arise and place in nomination a candidate supported by that state delegation. If a state which comes early in the alphabet has no nomination to make, it is usually assiduously courted by states whose turn comes later and who desire to trade roll-call positions in order to nominate, for there is a feeling that early nominations hold some advantage. When all the states have had an opportunity to place their candidates in nomination, the convention proceeds to balloting.

Character of Nominating Speeches Nominations are accompanied by speeches which relate the biography, extol the virtues,

[19] For a compilation of party platforms, see K. H. Porter, *National Party Platform,* The Macmillan Company, New York, 1924.

and praise the accomplishments of the favored candidate. Until recently a curious tradition ordained that these lengthy and flowery nominating speeches should maintain an air of anonymity until in a final burst of eloquence the name of the candidate was revealed to the delegates, despite the fact that everyone on the floor knew beforehand which candidate the speaker was eulogizing. The last conventions saw a more realistic technique, since some of the nominating speakers identified their candidates at the beginning. Moreover, the necessities incident to radio broadcasting have cut down the length, particularly in the case of the speeches seconding nominations. There is permitted only a single primary nominating speech, but seconding speakers at times may be quite numerous—in 1936 forty-seven seconding speeches were made in support of Franklin D. Roosevelt, each supposedly not to exceed five minutes.

Balloting The term "balloting" suggests that the presidential nominees are chosen by national conventions through the use of paper ballots. Actually both national conventions employ a roll call of the states for this purpose. As a secretary calls the names of the states in alphabetical order, a representative from each state will arise and announce the vote of that state. The conventions of both parties now permit the vote of a state delegation to be divided among several candidates, although prior to 1936 the Democrats had used the so-called "unit rule" which required the entire vote of a state to be cast for a single person. In general, it is not the custom of state delegations to take advantage of this rule, but there are always cases in which they are so divided among themselves that no agreement can be reached. Indeed, differences of opinion within a delegation may render it impossible to announce any vote at all, with the result that the entire delegation must be polled individually on the floor of the convention.

Number of Ballots Required to Nominate After each roll call has been completed, the votes are tabulated and the results are announced. A bare majority is now required by both parties to select a nominee, although prior to 1936 the Democrats had long stipulated a two-thirds majority. There is a considerable variation in the number of ballots necessary to choose a candidate. In the case of a President who expects a second term the requisite majority may be forthcoming on the first roll-call and will rarely extend

beyond three or four ballots. However, if the field is open, it requires an unusually outstanding candidate to secure the nomination in fewer than half a dozen roll-calls. Although recently the Democrats have been able to choose their nominee quite expeditiously, they have over a period of years had to resort to more extended balloting than their rivals—in 1924 setting up an all-time record of 103 ballots, spreading over nine days.

Nomination of a Vice-President By the time the process of selecting a presidential nominee has been completed, there is a strong sentiment for speedy adjournment. Hence nominating a Vice-President is rushed through with few of the flourishes and little of the pageantry accompanying the main item of business. The secretary calls the roll of the states; nominating speeches are made; ballots are taken; but all in an atmosphere of impatience and to some extent indifference. There is a disposition to accept as a running mate candidates favored by the presidential nominee, although in 1940 such support of Henry Wallace by President Roosevelt was bitterly resented by numerous delegates, with the result that the balloting for a vice-presidential nominee was the high light of the convention. In many instances an attempt is made to name the vice-presidential nominee from a faction which has not been too enthusiastic about the principal choice and thus needs placating.

Notification Ceremonies It has long been a well-established tradition that the leading candidates for the presidency shall not attend the national convention. This is not to say that these persons have not displayed the greatest interest in the successive stages of the convention; indeed, most of them have arranged for leased wires from the convention floor to their own homes or offices. Moreover, they have in every case had their managers on the actual scene of battle. Inasmuch as the successful candidate has not been present in the convention city, it has been the custom for national conventions to designate a notification committee, which at some subsequent date would call on the nominee and formally notify him of the honor conferred. However, the Democrats, no doubt led on by their tradition-breaking leader, Franklin D. Roosevelt, have recently departed from such a tradition, ending their convention with a personal appearance and speech of acceptance by their candidate.

BOSSES AND MACHINES AND THE SPOILS SYSTEM

Political Bosses In the first part of this chapter we have examined the regular organization of political parties. If the system operated as it is supposed to, there would be no occasion for additional discussion; however, in certain instances popular indifference has led to a deterioration of party vigor, which in turn has made it possible for political bosses to dominate the political scene. Although some writers have labeled Mark Hanna a national political boss, there is considerable question whether a single person has ever been able to usurp political power over the entire nation. However, in the states, cities, and other local units of government it has not been uncommon for political bosses to take the control from the people. The Huey Long regime in Louisiana, the Grand Dragon Stephenson spoliation of Indiana, and the Thomas Platt rule over New York may be cited as examples of political bossism. In the field of municipal government there have been many cases of bosses taking over the authority and managing city affairs to suit themselves. The long line of Tammany bosses in New York City, the approximately equal succession of Republican bosses in Philadelphia, the Cox-Hynicka combination in Cincinnati, the Magee-Flynn partnership in Pittsburgh, Boss Hague of Jersey City, "Poor Swede" Lundin in Chicago, the notorious "Doc" Ames of Minneapolis, "Curly Boss" Ruef of San Francisco, Tom Pendergast of Kansas City, are but a few of the overlords who have fastened on cities like leeches.

Distinction between Bosses and Leaders There is a common misapprehension that a political boss differs from a political leader primarily in the extent of power which is exercised. In reality, it is not possible to classify on such a basis, for some political leaders have wielded as much or even more authority than certain political bosses. The chief distinction between a political leader and a political boss is the source rather than the extent of power exercised. The former receives his mandate from the people, who, if they have complete confidence, may be very generous in the bestowal of such power. The political boss, on the other hand, is not granted his authority by anyone; rather he seizes it, much as the leader of a robber band or the chief of gangsters. It follows that a political leader is responsible to the people for his acts, while a political

boss answers only to himself. Political bosses may loot the public treasury, as did Boss Tweed, or they may be comparatively honest as was Boss Flynn; but in any case their motives are largely selfish, whether they are financial gain, the satisfaction of the lust for power, or some other personal desire.

Political Machines In certain cases when political parties degenerate and popular control disappears, a closely knit inner circle seizes a position of mastery. Here a small group effects substantially the same type of usurpation to be observed in the case of political bosses. There is no more justification for machine domination than for the dictatorship of bosses; in both cases the source of authority is forcible seizure, not a grant of the people. Certain political machines can point to ambitious programs of public works, to low tax rates, and to close cooperation with business interests, while others are remembered only because of their large-scale corruption. But whether a political machine be shrewd enough to take some account of ordinary standards of decency and the public weal, or whether it concentrates on the physical and financial looting of a city or state, its motives are invariably selfish. In the old days similar groups of political buccaneers were usually designated "political rings"; thus there was the Tweed ring in New York City, the Gas ring in Philadelphia, the Ames ring in Minneapolis. The best known recent municipal examples have been the Kelly-Nash machine in Chicago, the Hague machine in Jersey City, and the Pendergast machine in Kansas City.

Essentials of the Spoils System The spoils system implies the disposal of public jobs, the letting of contracts for public works, and the purchase of public supplies for the benefit of a political party, political boss, or political machine. The less responsible advocates of the system of spoils entirely disregard the qualifications of those persons and firms whom they feed from the public trough. However, many of the modern exponents of the system claim that they are willing to bestow jobs only on those party workers who have reasonably satisfactory competence and to award contracts for supplies and the construction of public works only to those firms that can show that they are both deserving at the hands of the party and capable of giving a reasonable performance of service for money received. The more extreme form of spoils

still continues to be the rule in some state and local governments. However, in the national government, as well as in more progressive states and cities, the refined variety is used. Of course, it need scarcely be said that the latter form is far less vicious in effect.

PARTY FINANCES

General Need for Substantial Funds Although large numbers of people are willing to expend generous amounts of time and energy on the affairs of fraternal organizations, service clubs, professional associations, chambers of commerce, and social groups without expectation of financial reward, political parties have somehow or other failed to attract similar support. That is not to say that there are no party members who are willing to perform service for the party without prospect of financial remuneration, but such persons seem to be the exception rather than the rule. This means that parties must raise and pay out large amounts of money not only for supplies, incidentals, radio time, and rent, but also for personal services.

Source of Funds It has not been uncommon for corrupt political bosses and machines to raise their campaign funds by looting the public treasury, by "selling" nominations to those anxious to hold elective office, by levying party taxes upon business subject to government regulation or anxious to secure government contracts, and by participating in the revenues of organized and protected crime. These methods, common as they may be in boss- or machine-dominated cities and states, are not, however, the general rule. Most of the campaign funds are raised by assessments upon candidates or are donated by citizens and groups of citizens who feel that it is to their interest that their party control the government. Many contribute because they expect some direct return if the party is victorious; others, particularly the small contributors, anticipate only indirect return from a government favorable to their political activities or point of view.

Large Contributors Large contributions to campaign chests are often made by individuals who expect direct return on their investment in the form of public office. Ambassadorships have been obtained in this fashion, much to the detriment of the morale and the reputation of the American foreign service. Large individual

contributions are, however, ordinarily not so destructive to impartial government as those by corporation officers or pressure groups.[20] Since the days of "trust busting," business has increasingly realized the intimate relationship between government and other forms of social organization. And consequently it has not been reluctant to attempt to make elective officers indebted to it. In the same way pressure groups of laborers and farmers have spent large amounts in contributions to the campaign funds of the party which they considered favorable to them. Some individuals and pressure groups have even gone so far as to contribute to the campaign funds of both parties to avoid the risk of being left out in the cold.

Miscellaneous Sources While the amounts that single groups sometimes contribute are quite substantial—in 1936 the organizations dominated by John L. Lewis gave $600,000 to the Democratic party—still these single contributors are not nearly enough to satisfy the vast needs. Various sorts of miscellaneous money-raising schemes are resorted to: Jackson Day dinners, individual solicitation by party workers, and letters to all-inclusive mailing lists asking for contributions of from $1.00 to $10.00. In general, however, most of the party funds accumulate from relatively large contributions, the great majority of which are not made altruistically.

Reporting of Party Expenditures It is difficult to ascertain the exact expenditures of political parties. To begin with, the officials in charge of party expenditures are inclined to be quite secretive in regard to such matters. Since 1910 federal legislation has required the national party organizations to report the contributions received and the moneys paid out, and these reports throw some light on the entire subject. However, the national organizations are responsible for only a part of political party expenditures—the state and the local organizations also raise and spend money in large amounts. Many states specify a public report of at least certain local party finances, but in other cases it is virtually impossible to ascertain what amounts are involved.

The Hatch Act Public opinion became sufficiently aroused following 1937 to demand more rigid federal restrictions on ex-

[20] Corporations are forbidden by law to contribute, but there is nothing to prevent their officers from doing so with a distinct indication of the indirect source.

penditures of political parties in presidential elections. Senator Carl A. Hatch of New Mexico introduced a bill which, after much delay, long drawn-out discussion, and the addition of amendments, finally became law in 1940. This act attempted to restrict the maximum expenditures of a single party in a presidential election to $3,000,000. The act does not, of course, set up regulations in regard to local-election expenditures; for this field does not come within the scope of federal action. It is apparent from the reports thus far made that the Hatch Act did not either in 1940 or 1944 limit party expenditures to $3,000,000 or less. Senator Guy M. Gillette, chairman of the Senate committee investigating the 1940 election, stated that "close to $35,000,000" was spent.[21] In the 1944 election the Hatch Act proved even less effective in limiting expenditures —indeed the situation approximated that existing in 1936. The Republicans expended a total of $13,195,377 exclusive of county and local payments, divided as follows: National Committee $2,828,652, state committees and finance committees $9,260,528, and independent groups and individuals $1,106,197. The Democrats spent a total of $7,441,800 exclusive of county and local expenditures, divided as follows: National Committee $2,056,122, state committees and finance committees $2,033,370, and independent groups and individuals $3,352,308. In addition the Political Action Committee paid out $1,327,776.[22]

Selected Bibliography

Bishop, J. B., *Presidential Nominations and Elections*, Charles Scribner's Sons, New York, 1916.

Brooks, R. C., *Political Parties and Electoral Problems*, 3rd ed., Harper & Brothers, New York, 1933.

Bruce, H. R., *American Parties and Politics*, 3rd ed., Henry Holt & Company, New York, 1936.

Cousens, T. W., *Politics and Political Organization in America*, The Macmillan Company, New York, 1942.

Farley, James A., *Behind the Ballots*, Harcourt, Brace & Company, New York, 1938.

[21] *New York Times*, August 15, 1941.

[22] See Louise Overacker, "Presidentical Campaign Funds, 1944," *American Political Science Review*, Vol. XXXIX, pp. 899-925, October, 1945.

Gosnell, H. F., *Boss Platt and His New York Machine*, University of Chicago Press, Chicago, 1924.

Holcombe, A. N., *The Political Parties of Today*, Harper & Brothers, New York, 1924.

——, *The New Party Politics*, W. W. Norton & Company, New York, 1933.

Kent, F. R., *Political Behavior*, William Morrow & Company, New York, 1928.

Key, V. O., Jr., *Politics, Parties and Pressure Groups*, rev. ed., The Thomas Y. Crowell Company, New York, 1947.

Lynch, D. T., *"Boss" Tweed*, Liveright Publishing Corporation, New York, 1927.

Merriam, C. E., *Chicago: A More Intimate View of Urban Politics*, The Macmillan Company, New York, 1929.

——, and H. F. Gosnell, *The American Party System*, rev. ed., The Macmillan Company, New York, 1940.

Odegard, Peter, and E. A. Helms, *American Politics—A Study in Political Dynamics*, rev. ed., Harper & Brothers, New York, 1947.

Orth, S. P., *The Boss and the Machine*, Yale University Press, New Haven, 1919.

Ostrogorski, M., *Democracy and the Organization of Political Parties*, 2 vols., The Macmillan Company, New York, 1908.

Overacker, Louise, *Money in Elections*, The Macmillan Company, New York, 1932.

——, *Presidential Campaign Funds*, Boston University Press, Boston, 1946.

Pollock, J. K., *Party Campaign Funds*, F. S. Crofts & Company, New York, 1926.

Porter, K. H., *National Party Platforms*, The Macmillan Company, New York, 1924.

Schattschneider, E. E., *Party Government*, Farrar & Rinehart, New York, 1941.

Sikes, E. R., *Federal and State Corrupt Practices Legislation*, Duke University Press, Durham, 1930.

Zink, Harold, *City Bosses in the United States*, Duke University Press, Durham, 1930.

10 · *Nominations and Elections*

THE NOMINATION PROCESS

Largely a State Matter With the exception of the selection of candidates for the presidency and vice-presidency, the nomination process is organized on a state basis. Even senatorial and congressional nominations are handled by the states. Indeed, until 1941 it had been held by the Supreme Court that, although the national government could lay down certain regulations having to do with elections of Senators and Representatives, it could not interfere with the preliminary stage: that of nominating candidates.[1] In May, 1941, in a Louisiana case the Supreme Court was impelled to take cognizance of the intimate relationship existing between the nomination and election of public officers and, reversing its position in the Newberry case, decided about twenty years earlier, held that the national interest in the nomination process was so vital as to justify federal safeguards.[2] Nevertheless, it is still the states that set up the machinery for or confer upon the political parties the power of making nominations.

Two General Methods of Making Nominations During the history of the republic several methods of encompassing the nomination of candidates for public office have been tried, but for some years only two devices have been in general use: the party convention and the direct primary. A third system, that of nomination by petition, has not been widely adopted, but it is to be encountered in certain important cities.

The Party Convention During the nineteenth century nominations for public office were in most cases the handiwork of party

[1] *Newberry* v. *United States*, 256 U. S. 232 (1921).

[2] Justice Harlan F. Stone delivered the opinion. The court divided four to three in this case. See *United States* v. *Classics*, 313 U. S. 299. This decision was implemented in 1944 when the Supreme Court upheld the voting of Negroes in the primary elections of Texas despite state or political party actions to the contrary. See *Smith* v. *Allwright*, 321 U. S. 649.

conventions. However, the defects of party conclaves received so much publicity and aroused so much hostile criticism that there has been a widespread trend toward the direct primary. It was asserted that party conventions were controlled by political bosses, that nominations were "sold," [3] and that the ablest candidates were passed over in favor of machine henchmen.[4] Although there has been some movement in the direction of resuscitating the party convention as a nominating mechanism, notably in New York and Indiana, most of the states have almost if not entirely abandoned this technique. Only Connecticut and Rhode Island continue the convention system of making nominations all the way down the line, while the majority of states no longer make any use of this plan either for state or local elective positions.

Accomplishments of Conventions Recent experience indicates that nominations made by the party convention vary widely in quality; even within a single state there may be considerable divergence, with certain cases of excellent nominations being flanked by distinctly inferior ones. In general, the record of party conventions in this field is definitely less consistent than is that of the direct primary. If the party convention is functioning at its best, it is probable that abler men will have a chance of being picked than under the leveling influence of the direct primary. On the other hand, at its worst the convention system can produce nominations that are probably inferior to those produced by the other method. Unfortunately, the party convention does not frequently operate under anything like ideal conditions, with the result that its selections particularly on the state and local levels are by no means outstanding.

Mechanics of the Convention Method The details of the convention system as used in nominating candidates for President and Vice-President have been discussed in connection with political parties.[5] As used on the state or local levels the system is much the

[3] For a long time it was the custom of Tammany Hall to require that those, for instance, who wished to be nominated for judgeships contribute $10,000 to the party campaign funds. Practices such as these were naturally interpreted as "sales."

[4] Lord Bryce, the great English commentator on the American political system, partially blamed nomination by convention for the supposedly low standard of the American presidency. See his *The American Commonwealth*, rev. ed., 2 vols., The Macmillan Company, New York, 1910, Vol. I, Chap. 8.

[5] See Chap. 9.

same, although, of course, it is organized on a smaller scale. Delegates representing the local party organizations or elected directly by the party members gather together in a state convention when an election is in the offing to choose the party slate of candidates. Local conventions are of several varieties—for example, city, county, and congressional district—and theoretically at least are somewhat closer to the rank and file of party members than is the case with state or national conventions. Whether conventions be on the national, state, or local level, the formal process calls for nominations from the floor and selection usually by an ordinary majority vote of the delegates. Actually decisions are usually made by small groups of party leaders meeting in the privacy of a hotel room who leave only the formal, perfunctory balloting to the delegates. The very secrecy and informality of these sessions makes for a certain irresponsibility and manipulation and permits noxious influences to creep in.

The Direct Primary In order to escape the boss and big business domination associated with the party convention, a preliminary election known as the "direct primary," which at least in theory places the responsibility of making nominations on the rank and file of the voters, was devised. Three different varieties of direct primary—the "open," the "closed," and the "nonpartisan" —have been used more or less extensively by the various states.[6]

The Open Primary During the early years of experimentation with the direct primary, the open form was frequently used. Minnesota, Michigan, Wisconsin, Montana, and Washington continue to employ this type of primary, but the other states prefer a more restricted arrangement, at least one that on the surface places more safeguards around the nominating process. The open primary raises no question as to the party affiliation of those who participate, thus freely permitting Democrats to take part in Republican primaries and vice versa. The open primary is severely criticized by some observers because it permits the unhampered use of the practice known as "raiding," which involves the wholesale migration of the voters of one party to the primaries of the other for ulterior purposes. When there is no particular contest within one party for the most important nominations, there is the temptation for large

[6] The outstanding work on primaries is C. E. Merriam and Louise Overacker, *Primary Elections*, University of Chicago Press, Chicago, 1928.

numbers of members of that party to "raid" the primaries of the opposing party in order that weak candidates may be nominated who in the final election will be defeated easily. Although only a few states now cling to the outright form of the open primary, a good many other states have adopted such lax closed primary regulations that there is actually comparatively little distinction to be observed. In these latter states the voters of one party are not supposed to participate in the primary of another party, but the barriers erected to prevent such shifting are so ineffectual as to be almost, if not entirely, useless.

The Closed Primary The most widely used form of the direct primary is that which is known as the "closed primary." Under this setup Democrats are expected to confine themselves to Democratic primaries and Republican voters are limited to Republican primaries. The basic principle underlying the closed primary is that a political party should be protected from the predatory invasions of rivals. As has been pointed out above, no adequate machinery for enforcing such limitations has been provided by many of the closed-primary states. In order to render the closed primary effective it is necessary that the voters declare their party affiliation when they register and that this information be used in determining the party primary in which they participate. It may be objected that such a requirement would prevent cases of bona fide transfer from one party to another. New York, which has one of the most effective closed-primary systems, allows such a shift of party affiliation, but requires that those voters abstain from taking part in the primary immediately succeeding their political migration.

The Nonpartisan Primary In jurisdictions in which nonpartisan elections have been set up, provision must be made for a harmonizing type of direct primary which extends no formal recognition to the existence of political parties. Under the nonpartisan primary only a single ballot is used and voters are permitted to indicate a choice of any candidate. The two candidates receiving the largest number of votes for each office are declared to be the nominees and their names are placed on the ballots of the final election.

Operation of Direct Primaries Irrespective of the type of direct primary, candidates ordinarily get their names on the official ballots by filing petitions which are signed by a specified number

of voters, varying from 0.5 per cent to 10 per cent of the electorate. Although at one time primary ballots were prepared and furnished by the political parties, it is now generally the custom to have official ballots printed at public expense. Moreover, the officials who conduct the primary elections and count the votes are now regularly appointed as public officials and compensated out of public funds.[7] The selection of candidates under the direct primary is supposed to represent the free and unhampered choice of the rank and file of party members, but in a good many instances this is scarcely what happens. When political machines dominate, it is invariably the custom to put up a machine slate which is given the backing of all the patronage, the campaign funds, and the powerful organization maintained for getting out and controlling the vote.[8] Even when political machines are not in control, it is not uncommon for political organizations to let it be known that they favor certain candidates. It must be obvious that such practices strike at the very heart of the direct-primary system.

Record of the Direct-primary Method Proponents of direct primaries long advanced the most eloquent arguments, promising that such an arrangement would eliminate most of the evils connected with the election process. The results have fallen far short of expectations, for many jurisdictions have evidenced little or no improvement. However, although the achievements of the direct primary have been disappointing, it is fair to say that they have been at least equal to and probably superior to those of the party convention.

Nomination by Petition Although the direct primary and the party convention cover most of the field, one cannot ignore the petition system of making nominations. None of the states has seen fit to set up such a system for the selection of state officials, but a number have established such arrangements for certain of their

[7] The candidate who has a plurality if not a majority is in most states declared to be the party nominee. However, in eleven southern states, in which because of Democratic dominance the primary is tantamount to the election, a majority vote is needed to secure the nomination. If no single candidate receives a majority, a "run-off" primary is held for the two who had the highest number of votes. In South Dakota and Iowa, when no candidate for nomination has a plurality of at least 35 per cent of the party vote, the choice of a nominee is left to the party convention.

[8] For an interesting description, see H. F. Gosnell, *Machine Politics: Chicago Model,* University of Chicago Press, Chicago, 1937.

local governments. In cities as widely separated as Boston, Pittsburgh, Cleveland, and San Francisco, municipal office-holders are nominated by petition. This plan provides for only the final election and authorizes the inclusion on the ballot of those candidates who have filed with the proper public officials a petition bearing the signatures of a stipulated number of qualified voters. The number of signatures required varies somewhat from city to city and even from office to office within a single city, but in general the requirement is not particularly onerous. In a large city those aspiring to seats on a city council may usually get their names placed on the ballot if they can offer from one hundred to five hundred or more signatures, while candidates for mayor may be expected to tender several thousand. After these petitions have been duly checked by the designated public officer and the number of bona fide signatures has been verified, the name is forthwith placed on the ballot. This system has the advantage of eliminating much of the expense which is often attendant upon direct primaries; it also renders it reasonably easy for any aspiring candidate to get his name before the people. However, it may make for such large numbers of candidates as to occasion some confusion in the minds of the voters and to lead to the election of candidates supported only by a minority.[9] Moreover, nomination by petition does not eliminate the control by political bosses and machines or the undue advantage enjoyed by those candidates who have the support of political parties.

REGISTRATION OF VOTERS

Purpose of Registration Before an election can be held, provision must ordinarily be made for the registration of voters. In theory, any person who possesses the qualifications of citizenship, age, and residence should be permitted a ballot on election day.[10] But experience has proved that it is not feasible to depend upon the applicant's own statement. Nor is there sufficient time amid all the confusion which characterizes most polling places to check on

[9] In Boston it is not uncommon for ballots to list six or eight candidates for mayor, together with a generous array of candidates for seats on the city council. Some of these have little or no support, but even so majority elections are not the rule.

[10] For tables showing qualifications and disqualifications in various states, see the *Book of the States*, Council of State Governments and American Legislators' Association, Chicago, published biennially.

such qualifications during the few hours that the voting takes place. In those rural areas in which every voter is personally known to the election officials, there is no particular necessity for registration; but in urban centers, where people may not be able to name the occupants of the apartment houses in which they reside, the situation is very different. At the present time, therefore, virtually all states require personal registration of voters, at least in urban areas.[11]

Periodic Registration The older system of registration requires every qualified voter who expects to participate in an election to register in person every two or four years. Such registration must be effected within the period specified by law, usually ending about one month before the date of the election. It may also necessitate a visit to a central office, which in large cities may mean a long and wearisome wait in line. In order to minimize the inconvenience to the voter there has been a disposition to supplement central registration with neighborhood places of registration. While these local offices may be open only during a few days, those who do not take advantage of the service may still accomplish registration by visiting the central office.

Permanent Registration During the last decades there has been a strong movement toward substituting permanent registration for periodic registration. The inconvenience to the voter of periodic registration, the failure to register which has caused many otherwise qualified citizens to lose their vote in an election, and the public expense involved in the registration of large numbers every two or four years have been mentioned as the basis of arguments for this substitution. Where permanent registration is provided the qualified voter finds it necessary to register only once, unless he changes his place of residence or causes his name to be dropped from the voting lists by failure to vote in two successive elections.[12] There can be little doubt that permanent registration has made the exercise of the suffrage distinctly more convenient to the voter. Moreover, after such a system has been set up, registration costs ordinarily drop sharply.[13] The chief defect thus far apparent in permanent registration is the tendency of the lists to become filled

[11] For a study of registration provisions, see J. P. Harris, *Registration of Voters in the United States*, Brookings Institution, Washington, 1929.

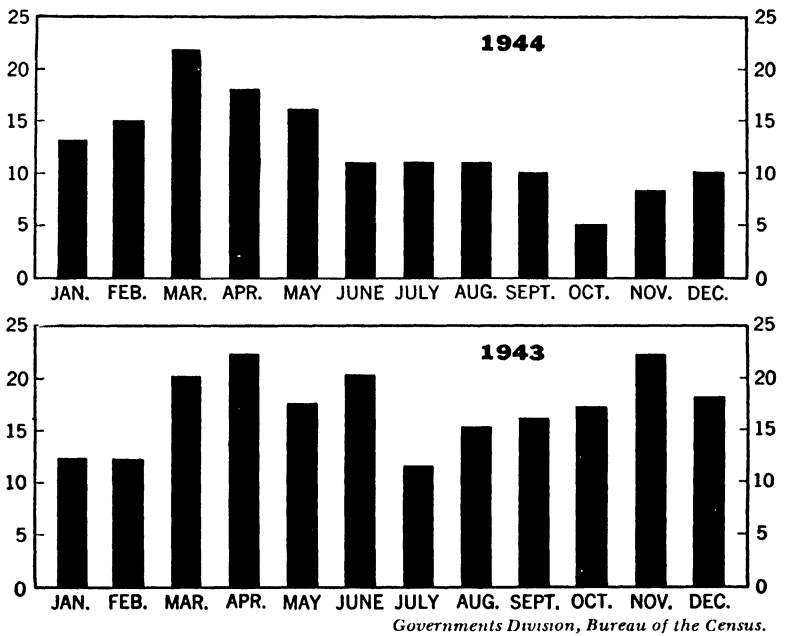
[12] Not all states include such a provision in their permanent registration laws.

[13] For comparative figures see Harold Zink, *Government of Cities in the United States*, The Macmillan Company, New York, 1939, p. 195.

with the names of those voters who have moved their places of residence or died. Voters transferring their residences are supposed to notify the registration officials, but they apparently do this only in exceptional cases. Registration officials attempt to keep the lists as up to date as possible, but they are usually not given the facilities to accomplish this adequately. Where failure to vote in two successive elections automatically results in canceling registration, large numbers of names are stricken from the voting lists. But even so there is the problem of those who have recently moved from their precinct or died. The result is that the registration records ordinarily show a considerably larger number of voters than the number of those actually qualified to vote. This state of affairs becomes serious only when a corrupt political machine attempts to make use of the names of those who have transferred their residence as a basis for "impersonation" and "repeating."

Essentials of an Adequate Registration System Considering the fact that the American voter is the most heavily burdened both in number of elections and in responsibility attached to them of any of the voters of the world, it is certainly not improper to place reasonable emphasis on his convenience. A registration system which requires a special visit to the city hall and entails an irritating wait in line leaves something to be desired. If periodic registration is to be expected, it seems only sensible to extend registration facilities to neighborhoods. Also, adequate periods of time should be allowed. On the other hand, one must not lose sight of the fact that the primary purpose of registration is not the convenience of the voter but the safeguarding of elections; otherwise registration could be abandoned entirely. Since the protection of the purity of elections is uppermost, it is particularly important that the registration lists be kept free of "padding." Where registration lists include the names of many persons who are no longer bona fide voters, a very real temptation is presented to unscrupulous politicians who fear the loss of an election. In certain localities, where political bosses and machines have seized the power, it is common knowledge that voting lists which are based on registration records have been padded over a period of years to the extent of anywhere from 15 to 30 per cent. Cases have been discovered where fire horses have been registered as voters, where names have been copied from tombstones for the registration lists, where a dozen or more imaginary persons

have been registered as residing on vacant lots. When the henchmen of a political machine impersonate these spurious names, sometimes repeating to the extent of casting ten or more ballots illegally in a single election, it must be apparent that elections are scarcely honest expressions of the public will. Registration officials cannot be expected to keep their records up to date and free from padding unless they are furnished adequate staffs for that purpose. It may be



Governments Division, Bureau of the Census.

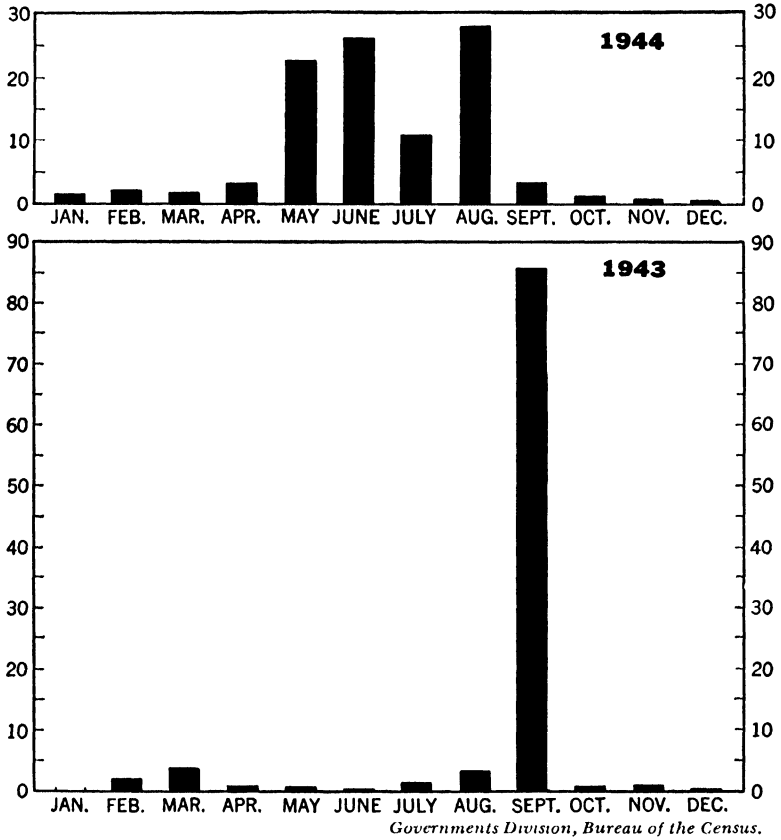
ELECTION DAYS BY MONTHS

added that only in exceptional instances have such facilities been made available.

ELECTION PROCEDURE

In the United States elections are scheduled at more frequent intervals than in any other country of the world. Presidential elections come every four years; elections to choose national legislators and state officials every two years; while local elections usually occur

biennially and frequently apart from general elections. When one adds to this array the primary elections which are commonplace in most of the states, the system becomes elaborate indeed.[14]



Governments Division, Bureau of the Census.

PRIMARY ELECTIONS BY MONTHS

Time of Holding Elections At an earlier period in the history of the United States there was considerable variation in the time of holding even general elections. However, at the present time, general elections are, except in the case of Maine, scheduled

[14] For a discussion of election procedure, see J. P. Harris, *Election Administration in the United States*, Brookings Institution, Washington, 1934.

on the first Tuesday after the first Monday in November of the even years. Nevertheless, when one takes into account the local and the primary elections, there is still considerable diversity in practice. Some states set primary elections as early as April; many prefer May; while in other cases it is not until late summer or even autumn that the primaries are run off. Municipal elections may be held at the same time as general elections, or they may be set for the fall of odd years or during the spring.

Voting Districts For the purpose of holding elections the states are divided into voting precincts[15] which, although varying in population, ordinarily include from three hundred to eight hundred voters, depending in a large measure on the density of population. Precincts with fewer than one hundred and more than a thousand voters may be encountered, but they are the exception rather than the rule. In general, however, the size should bear a definite relationship to voting convenience; that is to say, no more voters should be placed in one precinct than can vote at a single polling place without difficulty during the course of a day. If voting machines are in use, a larger number can be properly included than if paper ballots are employed, for the former method requires less time from each voter. If most of the voters work in the vicinity of the polling place, it is legitimate to extend the boundaries to take in more people than could be fairly included when many of the voters are employed several miles away in an office or an industrial plant. In each precinct a polling place is designated, which may be either in connection with a public building or on private premises. A few precincts have experimented with portable buildings which are set in place temporarily for election use but the great majority of polling places are in rooms of buildings ordinarily used for other purposes.

Polling Officials Each polling place is usually put in charge of from three to seven officials who are appointed, regulated, and compensated under the terms of the election laws of the state concerned. With the assistance of the police authorities these officials maintain order, determine whether applicants are qualified to vote, keep records, give out ballots, assign voting booths and voting machines, watch ballot boxes, and after the polls close, count and tabu-

[15] These are identical with the precincts discussed in connection with the organization of political parties. See Chap. 9.

late the votes.[16] After the results have been ascertained, returns are made to central offices designated by law where the complete results are compiled. It is the general practice to specify that these polling officers shall be chosen from the two major parties, with the party in power having a majority. The inspectors, judges, clerks, and sheriffs who make up the polling officials usually receive from $3.00 to $9.00 per day for their services out of public funds.

Ballots In previous times voting has sometimes been by voice, by the use of colored beans, or on the ballots supplied by political parties, but almost everywhere now the Australian type of ballot is employed.[17] These ballots, always officially prepared and implying secrecy in voting, display a great deal of variation. Some of them are scarcely larger than a post card; others approximate a tablecloth in size. Some are printed on white paper,[18] while others are on yellow, pink, blue, or buff paper. The most important difference characterizing the ballots used in the United States relates to the arrangement of the names of the candidates.

Party-column Type The Indiana type, now used in thirty of the states, places the names in party columns, the first of which goes to the party that won the last election. Candidates for the higher positions come first in the column, while the candidates for the less important offices follow by gradations. It is the custom in fifteen states to place the party emblem—a rooster, a donkey, an elephant, a fountain of water, two hands clasped, and so forth—over each party column. Immediately below the party emblem there is usually a large circle (or square) which when marked means the casting of a straight party vote.[19] Smaller circles (or squares) placed opposite the names of individual candidates permit the casting of votes for candidates of either party. A few states, for example, Montana, although using the general Indiana form, omit the circle

[16] In a few cases, provision is made for the central counting of votes. Under proportional representation such a method of counting is always necessary. However, even in the absence of such a system, central counting may be specified, as is done in the largest cities of Indiana.

[17] South Carolina, which uses party ballots, is the only state which does not at present use the Australian ballot in some form. For a detailed discussion of this topic, see E. C. Evans, *A History of the Australian Ballot System in the United States*, University of Chicago Press, Chicago, 1917.

[18] Six states use colored paper; thirty-nine states use white paper; and two use paper watermarked with a secret device.

[19] Twenty-eight states make provision for straight party voting.

or square at the top of the ballot. It is not difficult to perceive that the Indiana form, unless modified as in Montana, encourages the voting of a straight party ticket.

Massachusetts Type A second type, adopted by seventeen of the states, is known as the "Massachusetts ballot." States that use this variety group the names of candidates according to the offices which they seek. Such an arrangement leads, it is asserted, to a "split vote," inasmuch as the voter must place a mark after the name of each candidate for whom he desires to vote. Pennsylvania arranges the names of candidates according to office, but also lists the parties, providing a space opposite each which may be used to cast a vote for all the candidates of that party. Under the Massachusetts form the political affiliation of candidates is usually indicated, but where nonpartisan elections are in use the names of candidates appear without such designation.[20]

Voting Machines Approximately half of the states make some provision for the use of voting machines.[21] Although the larger cities account for most of the voting machines in the United States, less populous areas are increasingly adopting them. Superficially examined, it might be supposed that a voting machine constitutes a radical departure from the conventional American methods of voting. Actually, however, the machine is based on the Australian system and may use the principle of either the Indiana or Massachusetts types of paper ballots. Under the traditional scheme the voter is given a paper ballot which has been initialed on its back by two or more of the polling officials. He takes this to a vacant voting booth, marks it with a pencil, folds it in such a way that the initials of the polling officials are discernible, and either places it himself in a ballot box or hands it to an official for such a purpose. In those places where voting machines are used, the voter is directed to a voting machine which is not in use. Here, behind a curtain, he either pulls a large lever which casts a vote for a straight party ticket, or after indicating his respective choice of

[20] Forty-four states provide for party designations on the ballot.

[21] The chief reason they are not more widely employed is their high cost. Considering, however, the advantages that accrue from their use in that they are relatively hard to manipulate and to "stuff" and in that they prevent spoiled ballots, it would seem that they are well worth the expense. Twenty-eight states have voting machine legislation, but in only twenty-one states are the laws currently in operation.

candidates, pulls a lever or levers which will register a vote for these candidates. When paper ballots are employed, there is the considerable problem of ballots which are spoiled because the voters have mutilated them, indicated two candidates for the same office, or marked them with extraneous writing. At times as many as 15 or 20 per cent of the paper ballots must be thrown out because they have been spoiled in the process of voting. Voting machines may be somewhat terrifying to timid persons, but they obviate the possibility of spoiled ballots because no remarks may be registered on them and a mechanical contrivance makes it impossible to indicate choices of two candidates for the same office.

Absentee Voting All of the states with the exception of Kentucky, Mississippi, and New Mexico make some provision for absentee voting,[22] though in twelve other states restrictions of one kind or another seriously limit the use of this device. The thirty-three states which permit qualified voters who are absent from their places of residence on election day to vote in general, local, and special elections, including direct primaries, are far from uniform in their detailed practices, but they ordinarily agree on general principles.[23] To begin with, application for this privilege must be made to the proper officials—the county clerk, the city clerk, the voting commissioners, or other public officers charged with election administration—not less than a specified time before election.[24] In some states it is required that the absentee voter must be at least a given distance away from home on election day in order to be granted the concession, the argument apparently being that one who is merely a few miles away in an adjoining county can return without too much trouble to cast a ballot. Absentee ballots may be delivered directly to the voter or they may be mailed to a public official who has responsibility for the conduct of elections in the place where the applicant expects to be; in any case it is ordinarily stipulated that the absentee voter must go before a notary or some

[22] In New Mexico and Kentucky absent-voting laws have been held to be unconstitutional.

[23] In 1944 Congress provided for a federal absentee ballot in order to make it possible for those in military service to vote if their state absentee voting laws were inadequate. Only twenty states authorized the use of the federal ballot and only 109,479 of them were actually cast out of a total of 2,691,160 ballots cast by military personnel in the 1944 presidential election.

[24] The minimum time specified varies from state to state, but it is often anywhere from a week to two weeks.

other public officer to mark his ballot or to take oath that he has met the legal requirements. The marked ballot must be placed in a sealed envelope and returned to a designated office, often by registered mail; it must reach that office on or before a specified date to be counted.

Contested Elections If the election returns show that two candidates have run "neck to neck" or if there is evidence of fraud, the defeated aspirant may demand a recount of the votes or in some other way "contest" the election. Such action may be placed under the jurisdiction of ordinary courts or election commissions may have the general authority, but in any case probable cause must be shown by the contender. Some states permit a liberal resort to recounts of the votes if the interested persons are willing to put up a bond to pay the costs involved in case the retabulation indicates no change in results. Occasionally a very shocking state of affairs is revealed which leads to a new certificate of election; but, since most recounts are apparently induced by the bitterness of defeat, they produce no major changes in total results. Inasmuch as disputed elections are always a possibility, ballot boxes are usually sealed up after the initial count and preserved intact for several weeks or months, or until it has been determined whether they will be needed in connection with a contested election.

Election Frauds A study of the history of American elections will reveal a fairly large number of irregularities and occasionally even vicious frauds. Where political bosses and machines batten themselves on the people, there is almost always a certain amount of corruption in elections. The stakes are high and scruples are lacking, hence anything goes. As long as bosses and their henchmen are riding high, there may be little incentive to indulge in various sorts of tampering with the ballot boxes, although some regimes are so thoroughly corrupt that they seem to employ improper practices on general principles. Virtually every such aggregation of political buccaneers sometime or other is faced with a popular revolt and defeat, the prospects of which are terrifying. In such instances it is scarcely to be expected that honest elections will be held unless there is the greatest vigilance on the part of the people. Repeating is likely to reach large proportions; the buying of votes will be commonplace; corrupt election officials will tamper with the ballots, mutilating those of opponents, adding

spurious ones that favor their candidates, and occasionally totally disregarding the sentiments of the voters by falsifying returns. If the police authorities are sympathetic to the desperate machine, it is probable that no attempt will be made to maintain even a semblance of order. "Plug-uglies" will frequent the approaches leading to a polling place and without interference molest and even "knock out" machine opponents. Despite the election laws which prohibit any but election officials to remain within the confines of the polling places except for the purpose of voting, henchmen of the boss will go in and out of polling places with impunity, arrogantly giving orders to election officials as to what they are to do.

Recent Progress While the situation is by no means without blemish at present, extreme cases of fraud are definitely the exception rather than the rule. In almost any election there are likely to be minor irregularities, for some dishonest persons are always able to squeeze themselves in as polling officials, but one should not conclude from this that election frauds are now commonplace in the United States. More adequate election laws, the activities of the federal government in those elections where presidential electors or congressmen are being chosen, and the more responsible attitude on the part of the general public have combined to obviate extreme cases of dishonesty, save in rare instances.[25]

ELECTION REFORM

Corrupt-practices Legislation The national government and the states have given considerable attention to the passage of legislation regulating the conduct of campaigns and elections. Almost any state can boast now of election laws which fill a printed volume of several hundred pages. The national government has not legislated in anything like that detail on the subject of elections, but it has passed some important general laws dealing with those elections in which federal officials are being chosen. We have already noted the recent attempt of the latter government to limit the amounts expended by the major parties in connection with presidential elections.[26] In addition, the national government has in the same Hatch Act prohibited holders of positions paid in whole or

[25] Even as recently as 1946, however, widespread dishonesty and fraud in elections were discovered in Kansas City, Missouri.

[26] See Chap. 9.

in part out of federal funds from occupying offices in party organizations, delivering political addresses, or otherwise actively engaging in political activities.[27] An earlier regulation had imposed such a limitation upon civil service employees, but not until 1940 were such federal officials as attorneys, marshals, collectors of internal revenue, and housing executives brought under this provision. Another rule forbids the soliciting of federal employees for campaign contributions by other officials of government.

Corporations chartered under national legislation may not make political contributions at all, while other corporations are forbidden to assist in the financing of campaigns involving the election of a President, a Vice-President, Senators, or Representatives. The Federal Corrupt Practices Act of 1925 lays down certain restrictions bearing on the expenditures of candidates for senatorial or congressional seats. Senatorial aspirants are limited to a maximum expenditure of $10,000 and House candidates to $2,500, but if a state law fixes a smaller amount that maximum is substituted. Candidates are permitted an option which fixes the basic expenditure at 3 cents for every voter, as measured by the combined vote of all candidates for the position in the last election, provided that in no case shall a candidate for the Senate lay out more than $25,000 or one for the House more than $5,000. It may be added that these amounts do not include the expenditures of friends and political followers, which, of course, leaves a very big loophole. Finally, the federal government stipulates that all candidates for the Senate and the House shall report to the secretary of the former or the clerk of the latter an itemized statement of amounts received and expended. Political parties, organizations, associations, and groups which carry on activities in two or more states must also report under oath their financial conditions.[28]

State Corrupt-practices Legislation The state regulations on this subject vary widely, with some states going rather far in im-

[27] There is some difference of opinion as to exactly who are included under the provisions of this act. Are university professors who draw, say, $150 per year from federal funds, bound by it? For a discussion of this question, see Joseph R. Starr, "The Exemption of Teachers from the Hatch Act," *Bulletin of the American Association of University Professors*, Vol. XXVII, pp. 329-336, June, 1941.

[28] For additional discussion of federal regulations, see E. R. Sikes, *State and Federal Corrupt Practices Legislation*, Duke University Press, Durham, 1928.

posing adequate limitations and others permitting considerable laxity to exist.[29] In addition to setting up general standards relating to amount of expenditures by candidates, states forbid the buying of votes, voting more than once, tampering with the ballot box, treating voters with liquor, intimidating voters by uttering threats, and similar practices. Some states go so far as to forbid the offer of transportation to the polls. Promises of jobs or other considerations after election in return for support at the polls are almost uniformly made illegal.

Effectiveness of Corrupt-practices Legislation Anyone who has circulated around at election time knows that corrupt-practices legislation is frequently violated in spirit if not in letter. The buying of votes is still prevalent in those precincts inhabited by certain foreign groups, Negroes, and the very poor. It is common knowledge that cigars and whisky are passed out by political organizations and candidates. Promises of after-election reward are frequently made by eager candidates. Public employees often ignore the law and bend every effort to assist their parties in remaining in power, with the blessing of those who occupy positions of outstanding importance in the government. Even the national parties evade the spirit of the Hatch Act by exceeding the $3,000,000 maximum stipulated. Corrupt-practices legislation is framed and enacted by men who are themselves politicians and they quite naturally sometimes see to it that convenient loopholes are provided. Nevertheless, it would be a mistake to assume that such rules and regulations have accomplished no useful purpose. Elections are now more honest than ever before, and this may be attributed to some extent at least to corrupt-practices legislation.

The Short Ballot In many states the voter has been called upon to do more than may reasonably be expected of him. Sometimes he is presented with a ballot which approximates a tablecloth or even a bed sheet in proportions and which contains the names of a hundred or more candidates, along with constitutional amendments and direct legislation on which he is supposed to vote. In other states no single ballot is so large, but he may find himself in

[29] A great deal of assistance in securing detailed information may be obtained from H. Best, comp., *Corrupt Practices at Elections*, *Senate Document 11*, Seventy-fifth Congress, first session, Government Printing Office, Washington, 1937.

possession of as many as five or six different ballots. Even those who make a serious effort to inform themselves about the qualifications of the candidates are likely to discover certain names on the ballot which they have never seen before. It may be wondered whether the average voter is familiar with the strength and weaknesses of half the candidates whose names are presented to him at the polls. Such a situation encourages straight party support or requires blind voting in many instances. Any experienced political hand will testify that first place on the list of candidates for a certain position is good for a substantial number of votes. How can this be explained except on the basis that many voters having no information mark the first name on the list? Again it is well known that a familiar Irish name in a locality inhabited by Irishmen, a German name in a German community, and so forth, will attract a goodly number of votes. Critics of the traditional long ballot praise the English ballot, which is about the size of a post card and lists perhaps three to six candidates, and contend that the United States would do well to adopt a similar form. Cutting down the length of American ballots is dependent upon the elimination of minor public offices from them by substituting appointment for election. However, both state and national constitutional provisions, laws, and the psychology of large numbers of citizens militate against any reform as far-reaching as the English. But, despite the hurdles, some progress has been made in reducing the burden imposed upon the voter.

Frequency of Elections The task of the voter has been more than ordinarily heavy in the United States, not only because of the long ballot but because of the frequency of elections. What with regular elections and primary elections, general elections and special elections, elections for the choice of national and state officials, city officers, and county and special district executives, it seems that elections are always in the offing. It would be possible to reduce the number by doing away with the primary elections or combining national and state elections with local elections, but the price might be high. Something has been done by extending terms from one to two years and in many instances even to four years. The consolidation and elimination of special districts may also contribute toward such an end. However, the prospects for any substantial relief in this respect are not too bright. There is some reason to assert that the sympathy expended on the voter

has been misapplied. One cannot deny that the long ballot imposes a burden which the voter simply cannot be expected to carry with any ease, for it is unreasonable to ask a choice among a hundred candidates as well as an expression of opinion on a half dozen or more measures.[30] But considering the importance of voting and the record of the average citizen in attending weekly luncheon clubs, religious services, amusement offerings, and so forth, it does not seem that going to the polls on an average of perhaps once each year constitutes great hardship.

Preferential and Proportional Voting Democratic government presupposes majority rule; yet it is alleged that many, if not most, of our elections are of the plurality rather than of the majority variety, since the successful candidate is usually the recipient of only minority support. On the other hand, it is maintained that there is something wrong with a system which may give sizable minorities little or no representation in legislative councils. Preferential and proportional voting have been devised to correct these alleged weaknesses in the traditional system. Preferential voting is used in connection with the election of officials, such as mayors, treasurers, clerks, and auditors, where only a single incumbent is to be named. Under such a method of voting it is possible to indicate first, second, third, and even lower choices. If no candidate receives a majority of first-choice votes, the second-choice votes will be counted and added, and this process will be continued until one candidate has majority support.[31] Proportional representation is applied to the election of members of city councils and other bodies where several choices are to be made. Many European countries have made use of the "list" type of proportional representation.[32] In the United States a modified form, known as the Hare system, has been adopted by such cities as Cincinnati and Cambridge.[33]

[30] California has asked the voters to pass on even more measures.

[31] On this topic, see R. M. Hull, "Preferential Voting and How It Works," *National Municipal Review*, Vol. I, pp. 386-399, July, 1912. More than fifty cities have used preferential voting; among the best known are Columbus, Cleveland, San Francisco, Denver, and Portland.

[32] For additional discussion of "P.R.," see Chap. 31.

[33] For a favorable evaluation, see C. G. Hoag and G. H. Hallett, *Proportional Representation*, rev. ed., National Municipal League, New York, 1940. Cleveland abandoned "P.R.," after a brief trial. New York City, after making use of "P.R." in several elections, also abandoned it.

THE RECALL

Its Purpose The recall has been devised as a means of checking irresponsible public officials who receive their positions through election. In extreme cases the impeachment process may usually be employed to get rid of corrupt officials; in other instances the courts may intervene and terminate the public careers of dishonest public servants by sending them to prison.[34] If sufficient patience is possessed, it is always possible to wait until the next election comes around. However, these controls are not entirely adequate, particularly when elective officials are anything but satisfactory, yet shrewdly avoid going to such extremes that prison sentences or impeachment might ensue. If the recall is available, holders of public office may think twice before acting irresponsibly; in the event that they cross a certain line, public sentiment may become so aroused that they will be removed from office under the recall.

Recall Machinery When it appears that a public servant has proved unworthy, a recall petition is drafted and circulated for signatures among the qualified voters—from 10 to 35 per cent of whom must sign if the next step is to be taken. If the required signatures are forthcoming the petition is lodged with the city clerk or some other officer designated by law. Here the petitions are checked to ascertain whether the legal requirements have been met; and, if that hurdle is passed, a special election is called within a month or thereabouts—that is, unless a regular election is near at hand. In this recall election the voters do not ordinarily express themselves as favoring or opposing the removal of the official under fire, although such an arrangement would seem logical. Instead they are given the opportunity to indicate a preference among several other candidates who have been nominated by petition along with the incumbent. If the person holding the office receives the largest number of votes, it is said that the recall has failed; if another candidate has polled the most votes, then the incumbent must surrender his office.[35]

[34] Conviction on felony charges may or may not automatically have the effect of terminating the holding of public office. In those cases where officials are put in prison, they at least cannot very well exercise their functions.

[35] However, some recall systems provide two elections: one to determine whether the incumbent shall be removed; a second to elect his successor.

An Evaluation of the Recall Those who led the fight for the introduction of the recall were very sanguine in their hopes and predicted far-reaching advances in governmental standards. During the years between 1908 and 1926 they were instrumental in persuading twelve states to accept the recall for at least certain local offices—there has been no addition to the list since 1926.[36] A definite study of the use of the recall has thus far not been made except in so far as California is involved,[37] and consequently it is difficult to make a satisfactory evaluation. In only two cases, involving North Dakota and Oregon, has such a device been used on a state-wide basis; both of these occurred about twenty years ago. However, there have been numerous attempts to apply the recall to local officials—more than two hundred in California alone.[38] Many of these have turned out to be abortive, but a fairly large number have eventuated in the removal of mayors and other local officeholders, including two mayors of Los Angeles and a mayor of Detroit. In general, it is admitted that the moral effect has been good, although some critics maintain that undue caution has been displayed by executives because of the constant threat of recall. There have been cases in which no clear-cut charges were made against officials and yet in which recall resulted largely because the voters wanted a change. On the other hand, no one can doubt the malfeasance of the mayor of Los Angeles, who in the 1930's set up a racket in the Civil Service Commission under which a scale of regular charges was fixed for purchasing passing marks, advance use of the examination questions, a perusal of the questions for fifteen minutes, and related privileges. There is considerable criticism of the failure of most recall systems to place before the voter the definite question: "Do you or do you not favor the recall of X?" Finally, the experience of the some forty years that the recall has been in effect leads to the conclusion that its use must always be largely confined to officials, such as governors, mayors, and law-enforcing agents, whose functions are broad in character and who are themselves in the public limelight.

[36] Idaho actually does not use the recall; hence only eleven states now are active.

[37] See F. L. Bird and F. M. Ryan, *The Recall of Public Officers*, The Macmillan Company, New York, 1930, for the California study.

[38] See *ibid.*

Selected Bibliography

Albright, S. D., *Ballot Analysis and Ballot Changes Since 1930,* Council of State Governments, Chicago, 1940.

Alderfer, H. F., and R. M. Sigmund, *Presidential Elections by Pennsylvania Counties, 1920-1940,* Pennsylvania State College, State College, 1941.

Bean, L. H., *Ballot Behavior,* American Council on Public Affairs, Washington, 1940.

——, *How To Predict Elections,* Alfred A. Knopf, New York, 1948.

Best, H., comp., *Corrupt Practices at Elections, Senate Document 11,* Seventy-fifth Congress, first session, Government Printing Office, Washington, 1937.

Bird, F. L., and F. M. Ryan, *The Recall of Public Officers,* The Macmillan Company, New York, 1930.

Evans, E. C., *A History of the Australian Ballot System in the United States,* University of Chicago Press, Chicago, 1917.

Ewing, Cortez A. M., *Congressional Elections,* University of Oklahoma Press, Norman, 1947.

Harris, J. P., *The Registration of Voters in the United States,* Brookings Institution, Washington, 1929.

——, *Election Administration in the United States,* Brookings Institution, Washington, 1934.

Hoag, C. G., and G. H. Hallet, *Proportional Representation,* rev. ed., National Municipal League, New York, 1940.

Martin, Boyd A., *The Direct Primary in Idaho,* Stanford University Press, Stanford University, 1947.

Merriam, C. E., and L. Overacker, *Primary Elections,* University of Chicago Press, Chicago, 1928.

Pollock, James K., *Absentee Voting and Registration,* American Council on Public Affairs, Washington, 1940.

——, *The Direct Primary in Michigan, 1909-1935,* University of Michigan, Ann Arbor, 1943.

Powell, Alden L., *Registration of Voters in Louisiana,* Bureau of Government Research, Louisiana State University, Baton Rouge, 1940.

Rocca, H. M., *Nominating Methods, with Special Reference to the Direct Primary,* National League of Women Voters, Washington, 1927.

Sikes, E. R., *Federal and State Corrupt Practices Legislation,* Duke University Press, Durham, 1928.

II · *Pressure Groups and Public Opinion*

1 · *Pressure Groups and Pressure Politics*

It has often been the custom in courses in American government either to omit entirely or to dismiss with a few words the role of pressure groups in our political process. In view of the numerous topics which claim a place in such a course, it is perhaps not strange that relatively significant matters must be dealt with summarily. However, there are certain aspects of the American system of government which are so fundamental that they must be examined in detail if anything like an accurate understanding of the whole is to be achieved. There is a good deal of evidence that pressure groups have now attained a degree of influence which makes it imperative to class them with these distinctive features, even if other items which have traditionally enjoyed such eminence must be displaced. Students may have an excellent knowledge of the composition and organization of the legislative and the administrative branches, but they will lack a satisfactory understanding of the system as a whole unless they also know how and under what motive power these operate.[1]

Pressure Groups not a New Feature It is sometimes supposed that pressure groups have suddenly appeared on the American political scene, but this does not represent the facts of the case. Influences akin to pressure groups must have characterized the political process from the very earliest stages of its development. In Indian tribes there is evidence that decisions were sometimes made as the result of pressure exerted by the young braves who thirsted

[1] A good general study of pressure groups, which, however, confines itself largely to the national government, is E. P. Herring, *Group Representation before Congress*, Brookings Institution, Washington, 1929.

for warfare and scalps, even though the elders, who ordinarily controlled, doubted the wisdom of such action. Even in a simple society there are various groups which hold points of view differing from the opinions of the rank and file. As social and political organizations become more complex, the number and size of these groups tend to increase at a more than arithmetical rate.

Nature of a Pressure Group When these divisions within a society or a citizenry become so conscious of their desires that they perfect a definite organization, draw up a platform of objectives, and actively seek to bring about the realization of their aspirations, they attain the status of a pressure group. Pressure groups may be observed within business, professional, and religious organizations,[2] but they are particularly identified with government at the present time.

Place in the United States If one accepted the statements of certain persons at full value, he might conclude that pressure groups are found in juxtaposition to government only in the United States. No one who is familiar with foreign governments would assign to the United States any monopoly on pressure politics, however, for he knows that every government operates to some extent as a result of such influences. Nevertheless, it is probable that pressure groups in the United States are more numerous, better organized, more vociferous, and more influential in the day-to-day operation of government than in any other country. The very complexities of the socioeconomic structure in the United States account in some measure for this situation. In a highly industrialized country which has drawn its people from almost every race, which encourages freedom of speech and of religion, and which has been more than usually prosperous as far as national income is a measure, pressure groups find a more fertile field than in countries where there is greater uniformity of population and less wealth. Add to that the indifference of large numbers of citizens to public affairs, the "gimme" attitude toward government, and the ability of the public treasury to pay out large amounts in benefits, pensions, and subsidies of one kind and another without too apparent strain, and it is not at all surprising that pressure groups, under a

[2] For example, in religious conferences it is not uncommon to find well-organized groups of clergy who hold certain theological and social views and who seek to elect their members as officers.

general philosophy of "bigger and better every day," have thrived in the United States.

Pressure Groups and Political Parties The relationship between pressure groups and political parties is of more than passing importance. It is difficult to prove that pressure politics has been the direct consequence of the failure of political parties to take clear-cut stands on public questions; there is some reason to argue that political parties have ceased their former efforts in this field because they have felt that pressure groups were assuming the function. Be that as it may—though it seems likely that these two factors have interacted rather than that one of them has constituted the simple explanation—pressure organizations now do serve in lieu of party platforms to present to citizens an opportunity of expressing themselves on public questions. But pressure groups and political parties meet at more than the single point of presenting issues, for most pressure groups have discovered that their efforts are rarely very successful unless they have engaged in political activities. Therefore, pressure groups make contributions to campaign chests. If there is some question as to which party will win, a pressure group may find it advisable to assist both parties financially, on the theory that whatever happens at the polls the organization will find itself in favor with the party in power. Support may be tendered individual candidates; official endorsement of a party slate may be given. It need occasion no surprise that public officials who are the recipients of such favors from pressure groups will be impelled to listen to the representatives of these organizations after election and in many cases to act in their official capacities accordingly.[3]

Classification of Pressure Groups There are several methods of classifying pressure groups. In the first place, they may be divided into categories on the basis of the area or branch of government on which they concentrate. Thus there are pressure groups which focus their attention on the national government, others which operate in the state sphere, and still others which are associated with local government. Furthermore, certain organizations may direct their attention to the legislative branch, while others may be active in connection with administrative departments, quasi-judicial commissions, executive offices, and courts. This break-

[3] For an elaboration of this relationship, see E. P. Herring *op. cit.*, pp. 47ff.

down affords some notion of how extensive the efforts of pressure groups may be, but it is not too satisfactory because single organizations may be active in Washington, in several state capitals, and even in cities and counties. It is also quite possible that one pressure group may have a program which will call for both legislative action and administrative control.

A second scheme of classifying pressure groups makes their relationship to the public interest the determining factor. In one category may be placed together all groups, irrespective of whether they concentrate on Washington, the states, or local governments, that seek favors which are in conflict with the public interest. On the other hand, the reform associations which desire to improve economic, social, or political conditions may be classed together, again irrespective of the area or branch of government in which they operate. But this classification lacks validity too, for there is always some difference of opinion about whether or not the aims of a certain group conflict with the general welfare. Likewise, it is not always possible to take so-called "reform" groups at their face value because some of them may give lip-service to social and political betterment although they are, in reality, selfishly motivated. Then, too, pressure groups themselves are frequently not consistent in their attitudes: they may have goals which are not in keeping with the public interest; yet they may at the same time support legislation which is generally desirable.

A third classification places the emphasis upon the general nature of the membership and program of pressure groups. Professor Herring uses the following system: [4] ambassadors of American industry, embattled farmers, organized labor, federal employees' unions, professional societies, associations of organized women, forces of organized reform, nationalists, and internationalists. To this list of 1929 might be added G.I.'s and the organized recipients of public relief. This plan of breakdown has the advantage of being more definite than the two which have been noted above, although even here it is not always easy to decide whether a pressure group is industrial or professional, reform or internationalist.

Effect of Pressure Politics upon Government There has been some fondness on the part of those who discuss pressure

[4] See E. P. Herring, *op. cit.*, table of contents.

groups to identify them with evil;[5] in other words they are supposed by many to have a uniformly bad effect on the political process in the United States. An objective examination of the situation will, however, reveal a somewhat confused state of affairs. No responsible person can deny that some of the pressure groups are vicious in their desires, their methods, and their general effect upon government—these organizations would tear down the very political structure itself in order to attain their own selfish ends.[6] Fortunately such groups seem to be the exception rather than the rule. More dangerous are those organizations which, while not entirely unscrupulous, are so wrapped up in their narrow, personal point of view that they unconsciously exert themselves to bring about the weakening of the American system of government. As a rule, the programs of such groups are not bad in themselves and under certain circumstances might be admirable, but their supporters have such single-track minds that they ignore the general public good.

Contributions of Pressure Groups In defense of the pressure groups it may be said that government in the United States would have great difficulty in functioning if their activities were dropped. Congress and the state legislatures depend upon the representatives of these groups to furnish a considerable amount of information and guide service as a basis for legislation. Of course, there is the Congressional Library in Washington and state libraries in many of the states where legislators could obtain information relating to public questions. Moreover Congress and many of the states have legislative bureaus which in many cases could presumably furnish more assistance than they are at present called upon to give. But, even taking into account these possibilities, pressure groups make a distinctive contribution in many instances. Some of them pride themselves on high standards and display a considerable degree of responsibility in advising legislators on a pending bill. Moreover, public servants sometimes find it helpful to listen to the arguments advanced by two opposing groups. Supplementing such evidence with pointed questions put to the interested parties is, legislators

[5] It may be added that this is not the case with Professor Herring and others who have studied pressure groups with great care.

[6] At least some of the Communist organizations would seem to fall into such a category.

contend, a more feasible method of arriving at a reasonably tenable conclusion than is the mere digesting of reports based on the contents of legislative reference libraries. It must be remembered that public officials are frequently very busy men and that they work under the handicap of time, bureaucracy, and meretricious public sentiment. Under such circumstances the assistance and support which they receive from the more responsible pressure groups may be very helpful.

TECHNIQUES OF PRESSURE GROUPS

There is a wide variation in the techniques which are used by pressure groups. A single organization may depend upon an imposing array of instruments, even if it directs its attention only upon Congress, a state legislature, or an administrative commission. The time element enters in here, for the same organization may not rely on the same techniques in two successive years, either because a new fashion has been established, new officials direct the campaign, or an older weapon has proved ineffective. Nevertheless, there are certain methods which are standard year after year and which are to be observed, perhaps with slight modifications, in Washington, in the various state capitals, and even in the local governments.

Personal Contact It is probable that over a period of years pressure groups have used no method more widely than personal contact. The stronger organizations maintain a permanent staff of expert lobbyists who frequent the places where congressmen, state legislators, or administrative officials are to be found. The uninitiated thinks of these lobbyists as "buttonholing" the public officials in the corridors or on the steps as they go to and from their offices or chambers, and sometimes this may actually be done by the more amateur of the agents. However, the handsomely paid and highly skilled public-relations counsel which the wealthier organizations employ rarely condescend to an undignified approach of this kind. It is more likely that they will face the congressman across a luncheon table, converse with him in his office, offer advice in the committee room, or meet him at a club or on a golf course.[7] The more suave of these gentlemen never for a moment

[7] One of the most successful methods of influencing Congressmen is the "card file," which was brought into effective use by the Anti-Saloon League lobby-

descend to the level of suppliants, for they are far better paid, probably more adequately trained, and certainly as proud as the public officials whom they may secretly regard with contempt. Rather they present their case, as a lawyer would argue for a client, furnish typewritten arrays of information, answer questions, and engage in amiable conversation, interspersed perhaps with amusing and not uncommonly off-color stories. The reputation of the most successful of these lobbyists is outstanding—public officials may be flattered by their interest and their suggestions may be accorded the most respectful attention. Certain pressure groups retain agents who expect as much as $25,000 or even $50,000 per year as salary, together with generous expense accounts.

In addition to professional lobbyists, pressure groups may send their officials to Washington or a state capital on a special mission. Influential members of the pressure groups are frequently called upon to arrange personal conferences with their local legislators in order to canvass a certain situation. It is a sight repeated many times each day to encounter a state legislator or congressman talking earnestly to some man of affairs from his home district who has descended on Washington or the state capital to secure support for a particular course of action.

Letters, Petitions, and Telegrams In those cases in which it is not feasible to accomplish an end by employing the professional lobbyist or special representative to influence public officials, pressure groups often make use of letters, telegrams, and even petitions, although the last have somewhat of a bad reputation with many congressmen. The members of Congress and of state legislatures are ordinarily distinctly sensitive to sentiment in their home districts, for they are always looking forward to the future when they may have to come before the voters. Hence, they are quite attentive to the letters and telegrams that come to them from their constituents, especially if it appears that these are not of the "form-

ists during the twenties. An extensive biography of each Senator and Representative is kept which emphasizes all points on which he is likely to be vulnerable. When a vote not ordinarily controlled by the group is needed to push through a measure it supports, the lobby has only to go to its file to find a congressman who has in his background something which is likely to make him approachable. If the congressman is inclined to be recalcitrant, the file may even provide information of methods with which it is possible to bring him around.

letter" variety. Records are almost always kept of letters and telegrams that relate to pending business and it is the rule rather than the exception for legislators to inform themselves of the trend which home sentiment takes.

Radio Broadcasts The development of the radio has added a very effective technique to the list of those used by pressure groups. Appeals over local stations may not accomplish a great deal beyond the sphere of local government, but broadcasts carried by a national network may generate tremendous popular excitement which focuses on Congress. Only well-to-do or exceptionally clever organizations can resort to national hookups because of the cost involved; however when that method can be managed, the results may be striking.

Newspapers, Pamphlets, and Other Publications Many pressure groups maintain departments whose sole function it is to generate indirect support for their programs by the publication of printed material. Interesting articles may be written for the use of weekly, small-town newspapers which often require "filler"; these will be sent out by the thousand in "boiler plate" to local editors and many will find their way into the papers.[8] Occasionally a pressure group will be able to purchase a metropolitan newspaper, either outright or sufficiently to control its attitude on a certain matter. It is difficult to measure the influence of these methods, but it is believed that they are very effective in certain cases. The stories furnished rural and small-town papers are usually written in such a manner that it is not clearly apparent from what source they emanated; thus they lose the stigma of propaganda and are then doubly weighty in effect. The majority of pressure groups which are more than ephemeral publish bulletins, pamphlets, books, and other related printed material which may have a wide circulation or be limited to members. Some of these are so poorly prepared that they must be wasted as far as effect is concerned, but others are very ably written, profusely illustrated, and attractively printed.[9] One pressure group went so far several years ago as to

[8] The National Electric Light Association may be cited as an example of a pressure group which did this on a large scale and with amazing results. See Federal Trade Commission, *Report to Senate, Senate Document 92*, Seventieth Congress, Government Printing Office, Washington, pts. 1-11.

[9] *The Steel Age* may be cited as an example of excellent public-relations effort which indirectly creates a favorable sentiment for the steel industry.

circulate on a complimentary basis sixty-three thousand copies of a book retailing at $3.00, hoping that a handsome indirect profit would ensue.[10] Another organization, with large resources at its command, undertook to have textbooks written for use in university and public-school courses that would lead to favorable public support for the privately owned electric utilities.[11]

Buying of Support Then there are the practices which, although illegal, nevertheless continue to be used. The support of a public official may be purchased outright, perhaps by the payment of a lump sum of money, again by the proffer of corporation shares, or possibly on the basis of future business or professional concessions of a valuable nature. In the old days it was a common practice for unscrupulous interests to buy the votes of legislators, much as they would purchase materials or employ workers, paying anywhere from a few dollars to tens of thousands of dollars. Laws in both the nation and the states now make such action a felony, while public opinion regards transactions of this type with less favor than ever before. Nevertheless, it would be a mistake to assume that vote-buying has disappeared from the scene. In the case of members of Congress the outright sale of favor is certainly not commonplace, although there is reason to believe that more refined methods may be employed more or less frequently. In other words, passing "swag" in the form of gold or greenbacks is risky and lacking in finesse, whereas retaining a congressman or his relatives as legal or public-relations counsel at a fancy figure, either immediately or after his term has expired, is a horse of a different color. Standards in state legislatures are in general inferior to those in Congress and consequently there is more open graft at the state capitals than at Washington. Estimates vary as to how extensive the purchasing of votes really is.

Intimidation and the Use of Physical Force Intimidation and the use of physical force also reveal themselves in state capitals as they do not in Washington. It might be supposed that these crude tactics had long since passed into oblivion, but apparently there is more use of brute force than might be expected. Much more commonplace, however, is the verbal brand of intimidation which

[10] See *Congressional Record*, Sixty-sixth Congress, third session, p. 135.

[11] The National Electric Light Association did this on a considerable scale, employing a dean at Ohio State and a professor at Harvard to supervise.

threatens defeat at the next election, unless assistance is forthcoming. The law designates even verbal threats as illegal, but it is exceedingly difficult to cope with so tenuous a problem. "Plug-uglies" employed by pressure groups may use foul language and speak with brutal frankness when uttering their threats; more sophisticated lobbyists will couch them in such subtle words that it would not be at all easy to prove in court that any attempt at intimidation was made.

Miscellaneous In addition to the techniques already listed, several others are often encountered which do not submit to an easy classification. The movies have been an important instrument for many years, although the commercial films find that subtlety is demanded, unless box-office receipts are to suffer. In addition, large numbers of so-called "educational" films, prepared by various pressure groups to deal more directly with a field, are made available to schools, clubs, and other groups. Exhibits of one kind and another may be arranged and circulated about the country through the medium of trucks, conventions, and institutes. Lecturers may be furnished free of charge or at a nominal cost to address clubs, schools, and other assemblages on subjects which are of general interest and yet present the opportunity to create favorable public attitudes toward the pressure group's policies.[12] Playlets and pageants are written for the use of schools and Sunday schools by reform groups to build up sentiment against the use of liquor, tobacco, and harmful drugs. Posters may be provided; billboards rented; advertisements in newspapers purchased; and cuts and photographs furnished. Entertainments may be put on for public officials, during which food, liquor, and other divertissements may be offered in abundance. In one state capital a railroad company kept a dining car in the railroad yards during an entire legislative session and invited all of the members of the legislature to be its guests at their convenience.

National Pressure Groups Professor Herring found the Washington addresses of 530 pressure groups in 1928 and the number has increased since that time.[13] The head of a press bureau several years ago placed the number of representatives maintained by pressure groups in Washington at more than a thousand and

[12] The Pennsylvania Railroad may be cited as an example.
[13] *Op. cit.*, p. 19.

added that if secretaries, publicity aides, statisticians, and other members of office forces were included something like five thousand persons would be involved.[14] Some eight hundred agents of pressure groups were registered in 1948 under the legislation enacted in 1946 requiring such groups to report their representatives lobbying in Congress.

State and Local Pressure Groups The picture presented by forty-eight state capitals and several thousand cities and counties is even more complicated than that found in Washington. Some of the same groups evident in Washington are to be observed in the state governments, although they may be working for quite different ends and employ entirely different methods. On the other hand, there are some pressure organizations which, having no consuming interest in Washington, devote themselves wholeheartedly to state and local governments. The number of pressure groups varies from state capital to state capital, depending upon the degree of industrialization and populousness of the state, the particular time, and other factors.[15] Arizona, for example, could scarcely be expected to produce the horde of lobbyists which are a feature of government in Illinois because certain interests that are well established in the latter state may exist very modestly if at all in sparsely settled and unindustrialized Arizona. Even in the same state there may be striking difference from year to year—if the popular mood seems to be ripe for many changes and large numbers of legislative proposals are being considered, it is obvious that there will be greater pressure activity than during a period when the popular watchword is governmental quiescence. Some notion of the situation in a fairly typical state may be obtained from the 1941 session of the Indiana General Assembly. In that particular state pressure groups maintaining paid lobbyists[16] in the legislature are required to register with the secretary of state, to list their agents, and to describe very briefly and in general what they seek. In 1941 the

[14] E. L. Haskin in the *Washington Star*, May 30, 1926.

[15] For illuminating studies of pressure groups on the state level, see Belle Zeller, *Pressure Politics in New York*, Prentice-Hall, New York, 1937; and D. M. McKean, *Pressure Groups in New Jersey*, Columbia University Press, New York, 1938.

[16] The attorney general has ruled that organizations using regular officials for lobbying do not come under this rule; only where a special payment is made for lobbying is registration required.

number of registered pressure groups was approximately 150, while the number of lobbyists reached about 450—the equivalent of three lobbyists for each member of the legislature. In contrast to this record which marked an all-time high for the state, a special session limited to social welfare a few years earlier had seen only some twenty-five pressure groups registered and less than one hundred lobbyists. It may be noted that these numbers do not include the numerous organizations that carry on small-scale activities, depending upon their officers or members to volunteer a few hours or two or three days for service.

Control of Pressure Groups As pressure groups have grown in size and influence and as they have assumed sometimes direct control of the process of government, there has been considerable apprehension and opposition by those who interpreted them as wholly corrupt and evil. Others, aware of their importance and convinced of their utility, have advocated open acknowledgment of their work. Nearly all have admitted, however, that the organizations have led to excesses and have wanted to reduce that possibility.

Regulation of Lobbies Most of the attempts to regulate the activities of pressure groups have centered about one phase of their work—that is, the lobby. Ever since the 1870's and 1880's when the vote buying by many railroad corporations was revealed, the word "lobby" has had an evil connotation. Even today, although the standards of the lobby have improved somewhat and although it fulfills a more legitimate function as an information and group representation service, that connotation persists. Congressmen frequently repudiate vehemently any association with lobbies and many of them are very annoyed by the activities of what Senator Caraway called the "third house." [17] In consequence many bills have been introduced in Congress which propose to regulate lobbies. The majority of them have defined lobbyists as those who receive pay for attempting to influence legislation and have called for registration, together with a statement of purposes in view, of income, and of expenses. In 1935 the proponents of lobby control succeeded in obtaining partial satisfaction. Largely because of the widespread publicity given to power propaganda and power lob-

[17] See for congresisonal attitude, Herring, *op. cit.*, Chap. 14, and T. H. Caraway, "Third House," *Saturday Evening Post,* Vol. CCI, p. 21, July 7, 1928.

bies during the Federal Trade Commission investigation of utilities in 1928, it was possible to insert into the Holding Company Act a provision to the effect that all public-utility lobbyists be required to register and that no utility be permitted to contribute to a party campaign fund. Similarly, in 1938 foreign propaganda agents in the United States were required to register with the State Department, and agents for shipping concerns were ordered to register with the Maritime Commission. In 1946 Congress enacted legislation making it necessary for pressure groups active in Congress to register their agents, report the salaries of agents as well as general expenditures, and to indicate the nature of their programs.

Limitations of Lobby Regulation It is perhaps too early to pass judgment on the working of these laws. But if the experience of the states is any indication, it is to be doubted that registration or even reporting on expenditures and objectives will prove too effective. Some thirty-two states have enacted laws which involve substantially the same sort of registration provisions as do the federal regulations. Of these Indiana and New York are said to be among the best; yet it would be hard to deny that lobbies in those states are not fully as strong and frequently as disreputable as in states which attempt no regulation. Mere registration of lobbies and lobbyists cannot be expected to accomplish much effective regulation. It is based on the premise that bringing the formal activities of pressure groups and their lobby subdivisions into the light of day will automatically discourage their efforts. Many of the supporters of registration regulations apparently expected that the evils and excesses of pressure groups as a whole would disappear with the regulation of this phase of their activity. Since the maintenance of the lobby is only a portion of the work of these organizations, since they are increasingly active in other fields—the control of public opinion and of administrative agencies—it is unrealistic to expect that their importance would be greatly diminished by restraints on this one portion.

2 · *Public Opinion*

What is Public Opinion? Some two decades ago James Bryce defined public opinion as "any view, or set of views, when

held by an apparent majority of citizens." [18] Many students of the subject have agreed with Mr. Bryce in stressing the latter part of this definition, being of the definite opinion that a substantial majority of the people must hold a certain point of view or attitude before public opinion can be said to exist. Other authorities in the field find themselves in disagreement with the emphasis upon majority acceptance. Professor Harwood L. Childs maintains that "public opinion is any collection of individual opinions, regardless of the degree of agreement or uniformity," adding that "the degree of uniformity is a matter to be investigated, not something to be arbitrarily set up as a condition for the existence of public opinion." [19] During an earlier period, when political and economic issues were perhaps less complicated and in general therefore somewhat clearer, it was more feasible for a majority of the people to take a common position on an important matter, though even at that time it is probable that on most questions there was no majority opinion. As political parties have fallen into the habit of straddling the fence on almost every issue and human problems have become so intricate that even the experts cannot pretend to keep abreast of every development, majority opinion has become rarer.

Importance of Any Collective Opinion From the standpoint of the research scholar all of the hundreds of "collections of individual opinions" which exist at any time are grist for the mill, for it is only by examining and analyzing them all that an adequate understanding of the state of the public mind can be arrived at. Thus the point of view of the farmer, the laborer, the merchant, the professional man, the unemployed person, the radical agitator, the public servant, the housewife, the student, the inhabitant of the underworld, and many others must be taken into account. Furthermore, each of these groups is likely to be subdivided into numerous smaller aggregations of humans and these must be studied before the public opinion of the whole group can be understood. Take the farmer for example; he is composed of cotton planters, livestock growers, sugar-beet raisers, orchardists, gardeners, tobacco grow-

[18] James Bryce, *Modern Democracies*, 2 vols., The Macmillan Company, New York, 1927, Vol. I, p. 154.

[19] Harwood L. Childs, *An Introduction to Public Opinion*, John Wiley & Sons, New York, 1940, p. 48.

ers, wheat ranchers, tenant farmers, and numerous other component parts, each with a more or less distinct set of opinions in regard to the world and its problems. Too little attention has doubtless been given to all of the ramifications of public opinion of this character and hence we are not familiar with all the details that are significant.

Organized Public Opinion While the expert needs to know a great deal about the attitudes and beliefs of the multitude of large and small subdivisions of society, the student of government is particularly concerned with the organized public opinions of reasonably large groups. These groups do not necessarily have to include a majority of the people or indeed even a substantial majority of the voters, for the experience of the last few years has indicated that comparatively small groups which are militantly supporting a certain point of view may have great political influence.

EXPRESSION OF PUBLIC OPINION

There are numerous channels through which public opinion is expressed in the United States; a detailed examination of these would require an entire book.[20] Students of American government are, of course, particularly concerned with public opinion in so far as it seeks to control political action, though they cannot be entirely oblivious to public opinion that determines social action, since the fundamental strength of the government may depend in the last analysis upon the home, the church, the business structure, the cultural traditions, and the intellectual life of a people.

The Ballot Perhaps the most important, certainly the most obvious, device through which public opinion controls public affairs is the ballot. When general and special elections take place, as they do both regularly and frequently in the United States, large numbers of people indicate their attitudes and opinions on various public questions. In supporting a certain candidate a voter declares that he favors the stand taken by that candidate or that he opposes what has been done by the opposing candidate. If amendments or statutes are referred to the voters, there is an even more direct

[20] For examples of such books, see Edward L. Bernays, *Propaganda*, Liveright Publishing Corporation, New York, 1928; W. Brooke Graves, *Readings in Public Opinion*, D. Appleton-Century Company, New York, 1928; and Milton Wright, *Public Relations for Business*, McGraw-Hill Book Company, New York, 1939.

means of expressing opinion. No method of expressing public opinion is basically more powerful than this, for political heads fall when the voters reveal their disapproval of a public official and political parties are thrown out—the most extreme penalty thus far devised. On the other hand, elections do not occur every day or indeed every year in the case of the more important officeholders and hence the ballot offers a somewhat infrequent opportunity of giving expression to popular desires.

Public-opinion Polls If frequency is to be stressed in connection with the expression of public opinion, public-opinion polls deserve a good deal of attention, since they may be operated more or less continuously. The earlier polls were carried on under the auspices of newspapers [21] and periodicals, of which the best known was probably the *Literary Digest;* they sought to obtain a forecast of how an election would go, particularly who would be chosen President or governor. Some of these polls succeeded reasonably well in hitting the mark, but the record was a spotty one and accuracy was more a matter of chance than of mathematical certainty. More recently the American Institute of Public Opinion, *Fortune* magazine, and the University of Denver have been active in surveying public opinion, making use of selected samples which are more carefully chosen. The number of persons polled is very much smaller, but they are selected so as to represent different ages, sexes, occupations, incomes, educational backgrounds, geographical areas, and other factors which are considered to be important in determining the public opinion throughout the country.

An Evaluation of Public-opinion Polls The popularity of the Gallup polls, the findings of which appear from week to week in many of the leading newspapers, would suggest that some public-opinion polls achieve a large measure of success. The reliability of the results is a matter of controversy, for as Professor Childs states: "It is very difficult if not impossible to establish their accuracy." [22] If the public opinion arising out of an election is being sampled, there is no way to judge reliability, until the election returns are in and then it is always possible that a shift has occurred at the

[21] *The Cincinnati Enquirer,* the *Chicago Journal,* and the *Columbus Dispatch* were among the newspapers which conducted successful polls.

[22] See Harwood L. Childs, *An Introduction to Public Opinion,* John Wiley & Sons, New York, 1940, p. 59.

last minute to discredit the results of the poll. It is probable that the results of polls having to do with candidates for public office are more reliable than those seeking to ascertain public opinion on political and social questions. At any rate a citizen can distinguish between two leading candidates, while a poll on a public issue necessitates framing questions in such a manner that those interviewed will know exactly what is involved. Any university student or instructor will know how difficult it is to phrase a question in such a way as to obviate all ambiguity and misunderstanding. The skill required is even greater when persons of very diverse background are being interviewed.

Direct Communications to Public Officials With the post office available to almost every citizen and the telegraph and telephone at least fairly accessible, it is to be expected that large numbers of persons will communicate directly with the members of Congress, the President, the members of state legislatures, and other public officials, stating what they think should be done in a certain matter. The mail of some of these officials is very heavy, while at times telegrams may pour in by the hundred. Long-distance telephone calls are less common as far as the national government is concerned, though they are often used to contact a state or local official. How much attention should be paid to these letters, telegrams, and telephone messages? Do they represent the opinion of a majority or at least a substantial minority of the population, or are they mainly the efforts of a few reformers or busybodies who have little or no following? Even when the most controversial questions are being considered and the bulk of these communications reaches a record level, only a comparatively small proportion of the whole number of inhabitants of the United States is represented. The fact that old-timers who have served many years in public office regard the communications which they receive as worthy of serious consideration en masse, if not individually, is significant.

Other Channels Earlier in this chapter the activities of the pressure groups in Washington and the state capitals were outlined. It is not necessary to repeat that material at this point, but it should be borne in mind that the stronger pressure groups are often important channels through which public opinion is expressed. Public officials know from experience approximately what the strength of

the farm lobby, the manufacturers' association, the American Legion, the National Education Association, and many other pressure groups is. Letters from the readers to the editor which regularly appear in many newspapers also may justify attention as an indication of public opinion. While some of these letters are written by cranks and chronic complainers, others are contributed by citizens who have more than ordinary opportunity to observe public opinion at the grass roots. Resolutions adopted by conventions, associations, clubs, churches, and other groups are often transmitted to government agencies and officers; in some instances they are purely formal and cannot be taken seriously, while in other cases they may represent the collective judgment of large numbers of competent citizens. Petitions may seem to fall into the same category as resolutions, though in general it is probable that they are less to be relied upon. Many people will sign virtually any petition in order to avoid saying "no" and to save themselves embarrassment—indeed experiments have been made to demonstrate that numerous signatures can be obtained to petitions urging the most arrant nonsense which no sane person would favor if he read the provisions.

THE CONTROL AND FOCUSING OF PUBLIC OPINION

Unless the opinions which the citizens hold in regard to public questions can be transformed from passivity into something more positive, it is not likely that the net result will be very great, at least in a constructive way. Passive dislike of the government and its policies, of course, makes for a weak citizenry and consequently a weak government; lack of any interest in public affairs at all also has far-reaching consequences, as we noted in discussing the obligations of citizenship.[23] However, in assessing the role of public opinion in the government of the United States we are particularly concerned with that collective opinion which can be brought to bear on those who are responsible for determining the policies and actions of the government. Occasionally there will be such vigorous interest in a matter that public opinion will more or less crystallize itself and be brought spontaneously to the attention of the persons in authority. However, as a rule there is not sufficient force back of individual opinion to generate a concerted collective ex-

[23] See Chap. 7.

pression, unless some outside agency is present to assist in mobilization. Quite frequently there may be no individual opinions to be focused until some individual or group has taken the initiative in bringing matters to the attention of large numbers of people. It might be expected that with all of the dissemination of news which characterizes this country almost every citizen of mature years would have a point of view in regard to every public question. Yet when one recalls how many problems there are and how intricate some of these are and at the same time how busy the average person is earning a living, caring for a family, getting a formal education, or finding entertainment, it is not surprising that so many people have little or no idea at all about even highly important matters. In the succeeding paragraphs we shall discuss the various means of creating public opinion, controlling it after it has been created, and focusing it in so far as it already exists.

The Political Leader In a representative form of government it is sometimes asserted that a public officeholder should act only as a servant of the people, receiving their desires and carrying those desires into practical application in the government. But the leader in politics realizes that the rank and file of the people are not in a position to know what is going on, what needs to be done to meet a certain situation, or what the result of a given policy will be.[24] Consequently he considers it his duty to take steps to bring important matters to the attention of the citizens, to fashion the resulting public opinion in such a manner that it will be enlightened and mature, and to focus that public opinion upon the branches of government in such a way as to compel action for the public good. All of the abler recent Presidents and governors have conceived of their duty in this light and many mayors, congressmen, and state legislators have had something of the same philosophy.

Effectiveness of Political Leaders The success of a given leader depends in large measure upon his resourcefulness, his energy, his understanding of social psychology, his oratorical ability, his adroitness in phraseology, and the temper of the times. Even the

[24] For an informing discussion of the role of the leader, see Sigmund Neumann, "Leaders and Followers," in R. V. Peel and J. S. Roucek, eds., *Introduction to Politics*, The Thomas Y. Crowell Company, New York, 1941, pp. 250-282.

most courageous and energetic leader may fail if prosperity is so prevalent that people refuse to concern themselves about public affairs. Conversely in a situation of general despondency and hopelessness it may be difficult for even a gifted leader to arouse the people out of their desperation.

Demagogues If one is inclined to criticize the political leaders for their attempts at controlling public opinion, a good antidote may be found in the efforts of the demagogues who seem to thrive on the fertile American scene. The energy of some of these creatures is almost unbelievable; their disregard of facts and general irresponsibility are striking. The least successful of these gentry use the street corner and the soapbox as their pulpit, but the really powerful ones have at their command national radio hookups, newspaper columns, periodicals of one kind and another, and other excellent facilities. A few even go so far as to use the halls of Congress as their sounding board. Being uninhibited by conventional standards of honesty, good taste, and reliability the demagogue often seems to be in a most advantageous position to create and direct public opinion. He can make the most extreme statements, paint incredibly vivid pictures, charge his rivals with the most dastardly crimes, all without foundation, and consequently he can sometimes bring hordes of gullible, sensation-loving people to his ranks. So great is the emotional control which he establishes over his followers that he can call for almost any amount of service and assistance without any monetary remuneration. This enables him to flood Washington or a state capital with telegrams on a few hours' notice and permits him to wield far-reaching power at times.

Propaganda The term "propaganda" is frequently associated with that which is untrue or half true. That is not to say that propaganda is always regarded as violently false or flagrantly evil, but there always lurks the notion that the intent is to delude, overimpress, or accomplish an end through ulterior motives.[25] The

[25] For additional information in regard to propaganda, see L. W. Doob, *Propaganda–Its Psychology and Technique*, Henry Holt and Company, New York, 1935; H. L. Childs, ed., "Pressure Groups and Propaganda," *Annals of the American Academy of Political and Social Science*, CLXXIX, entire issue, May 1935; H. L. Childs, ed., *Propaganda and Dictatorship*, Princeton University Press, Princeton, 1936; and F. E. Lumley, *The Propaganda Menace*, D. Appleton-Century Company, New York, 1933.

result is that large numbers of people manifest a certain cynicism, claiming that everything is propaganda and consequently unreliable.

Propaganda and Public Opinion Propaganda has a very intimate relation to public opinion, not only in the United States but throughout the world. It is used widely and effectively by many of the pressure groups; it is the chief ammunition of the demagogue. Government departments are charged with employing it as a means of building up support or good will, and if the more invidious connotation is dropped and one has in mind an attempt to spread information and inculcate certain favorable attitudes there is no doubt that the claim is accurate. Political parties have long found it expedient to print tons of literature of a propagandistic character, while their orators have uttered hours on hours of verbal propaganda. Despite the disillusionment of large numbers of people, this technique remains a vital force in creating and controlling public opinion, for some propaganda is so subtle and cleverly disguised that it is almost, if not quite, impossible to detect it.

The Effect of Propaganda Contrary to the belief of many people, public opinion produced or focused by propaganda is not necessarily a deteriorating influence in American government. Some of it is distinctly vicious and deserves the most severe condemnation, but some of the public opinion growing out of such a device is excellent from the standpoint of strengthening the fabric of the American political system. It is important not to confuse the product with the technique employed to create the product; therefore, the public opinion produced should be analyzed and evaluated on its own merits rather than on the basis of the means used to crystallize it. That is not to say that the end always justifies the means, but it is true that the two are not identical and must be examined and appraised separately.

Reformers In the nineteenth century and well into the present century a great deal was, on occasion, heard about reformers. These persons were portrayed by cartoonists and popular writers as the strangest creatures imaginable. One of them might be described as a scarecrow of a man, tall and lank, with ill-fitting and somber-hued clothing, more often than not with cadaverous facial features. Stubborn obstinacy was indicated by a lantern jaw and sternly pursed lips; the merest child would know that he was

cantankerous and unreasonable by the sour expression that invariably distorted his face. He was supposed to be lacking in common sense, good judgment, and ordinary co-operativeness; given to intense selfishness; motivated by the perverse satisfaction derived from inflicting pain on his fellows. Rarely accomplishing anything of real importance he was credited with compensating for his own frustration by making himself a social goad and a public nuisance. Of course, no such creature as this ever actually existed, though many sincere people took the stand for the initiative and referendum, suffrage for women, the direct election of Senators, the recall of public officials, and many other so-called "reforms."

Influence of Reformers The fact that the above changes were all brought about either throughout the entire country or in certain states indicates that the reformers were successful in stirring up a considerable amount of public opinion. Many of the proposals which they made were not accepted, and when they found themselves in positions of public trust, they sometimes did not know what to do. Even where they labored courageously and energetically, they often were swept out of office after a single term before they had been able to carry into effect many of their plans. Altogether they made a substantial contribution to American public morality, though they were not always the most pleasant companions. They are now rarely encountered and in general belong to the colorful days of the past because, whether we realize it or not, their thunder has been stolen by political leaders.

Citizens' Organizations In the larger cities, and in some of the smaller cities and towns as well, citizens' organizations—to the number of several hundred—are now functioning.[26] National and international affairs receive the attention of the newspapers and the radio commentators, with the result that there is always a reasonably alert public opinion in those spheres. But local government tends to be prosaic in the eyes of many people, that is unless it involves a sensational case of embezzlement or shocking irregularity, and consequently large numbers of citizens pass their years in a city without knowing what is going on in the government. It is true that local government comes into more intimate contact with

[26] Several pamphlets have been issued by the National Municipal League dealing with these organizations. See, for example, "A Citizens' Council—Why and How?" and "Citizens' Councils in Action."

the people than either the state or the national governments, but the fact remains that the indifference, ignorance, and inertia of large numbers of the people toward these governments is positively shocking. There is grumbling that the tax rate is so high and complaint that the services rendered are often so poor, but that is as far as the ordinary citizen goes. The result is the usurpation of control by political bosses and machines primarily interested in their own selfish aggrandizement.

Functions of Citizens' Groups To meet this situation citizens' organizations have been formed.[27] Neighborhood groups bring in both the men and the women; a central committee, made up of representatives of the local organizations, serves to co-ordinate activities, decides on strategy, and marshals the efforts toward some concrete end. The main purpose of these groups is to stir up widespread public opinion which will result in greater efficiency, economy, and responsibility in local government. The strongest bosses find themselves helpless in the face of an aroused public opinion and give up their places; civic-minded leaders among the business and professional men assume seats on the city council and employ experts to direct the administrative departments. Able leaders have contributed to this record, but the most important factor has been wide-spread interest on the part of the citizens and an alert public opinion.

Miscellaneous A considerable amount of space might be devoted to an examination of other agencies which are active in developing and controlling public opinion as it relates to public affairs. Despite the limited space available after all the advertisements, comics, sport pages, household hints, and syndicated columns of one kind and another have been set up, newspapers do manage to find some space to devote to various matters having to do with government. Many of these stories are presented in such a matter of fact way that no effort is to be perceived to influence public opinion. Editorials, on the other hand, usually take a definite stand, while certain stories may be so written that they seem to be aimed at developing or directing public opinion. For some years there was a belief, fostered by the newspapers themselves no doubt, that in the last analysis public opinion in the United

[27] See Bessie Pierce, *Citizens' Organizations and the Civic Training of Youth*, Charles Scribner's Sons, New York, 1933.

States was primarily formed by the press. Then in 1936 the voters re-elected Franklin D. Roosevelt by a generous margin, despite the fact that a decided majority of the newspapers favored Landon. This had the effect of discounting the power of the press in the field of public affairs, but there is evidence that it still remains one of the more effective forces. The radio, the movies, periodicals such as *Life*, *Time*, and *Newsweek*, outdoor advertising, the churches, the schools, all have more or less important roles in forming and directing public opinion, but space prevents detailed consideration of their specific activities.[28]

Selected Bibliography

1 · *Pressure Groups*

Capper, Arthur, *The Agricultural Bloc*, Harcourt, Brace & Company, New York, 1922.

Chase, Stuart, *Democracy under Pressure; Special Interests versus Public Welfare*, Twentieth Century Fund, New York, 1945.

Childs, H. L., ed., "Pressure Groups and Propaganda," *Annals of the American Academy of Political and Social Science*, Vol. CLXXIX, pp. 1-239, May, 1935.

Crawford, K. G., *The Pressure Boys*, Julian Messner, New York, 1939.

Gaer, Joseph, *The First Round; The Story of the C.I.O. Political Action Committee*, Duell, Sloan & Pearce, New York, 1944.

Gruening, E., *The Public Pays: A Study of Power Propaganda*, The Vanguard Press, New York, 1931.

Hapgood, Norman, *Professional Patriots*, Albert & Charles Boni, New York, 1927.

Herring, E. P., *Group Representation before Congress*, Brookings Institution, Washington, 1929.

——, *Public Administration and Public Interest*, Whittlesey House (McGraw-Hill Book Company), New York, 1936.

Holcombe, A. N., *The Middle Classes in American Politics*, Harvard University Press, Cambridge, 1940.

Hunt, E. E., ed., *The Power Industry and the Public Interest*, Twentieth Century Fund, New York, 1944.

[28] Numerous articles dealing with these instruments will be found in W. Brooke Graves, ed., *Readings in Public Opinion*, D. Appleton-Century Company, New York, 1928.

Key, V. O., Jr., *Politics, Parties, and Pressure Groups,* rev. ed., The Thomas Y. Crowell Company, New York, 1947.

Leiserson, Avery, *Administrative Regulation; A Study in Representation of Interests,* University of Chicago Press, Chicago, 1942.

Logan, E. B., "Lobbying," *Annals of the American Academy of Political and Social Science,* Vol. CXLIV, Supplement, July, 1929.

McCune, Wesley, *The Farm Bloc,* Doubleday, Doran & Company, Garden City, 1943.

McKean, D. M., *Pressure Groups in New Jersey,* Columbia University Press, New York, 1938.

Odegard, Peter, *Pressure Politics,* Columbia University Press, New York, 1938.

Rutherford, M. Louise, *The Influence of the American Bar Association on Public Opinion and Legislation,* Foundation Press, Chicago, 1937.

Schattschneider, E. E., *Politics, Pressures, and the Tariff,* Prentice-Hall, New York, 1935.

Wright, Milton, *Public Relations for Business,* Whittlesey House (McGraw-Hill Book Company), New York, 1939.

Zeller, Belle, *Pressure Politics in New York,* Prentice-Hall, New York, 1937.

2 · *Public Opinion*

Albig, William, *Public Opinion,* McGraw-Hill Book Company, New York, 1939.

American Institute of Public Opinion, *The New Science of Public Opinion Measurement,* American Institute of Public Opinion, Princeton, 1938.

Bailey, Thomas A., *The Man in the Street: The Impact of American Public Opinion on Foreign Policy,* The Macmillan Company, New York, 1948.

Bernays, Edward L., *Propaganda,* Liveright Publishing Corporation, New York, 1928.

Cantril, Hadley, and others, *Gauging Public Opinion,* Princeton University Press, Princeton, 1944.

Childs, Harwood L., *An Introduction to Public Opinion,* John Wiley & Sons, New York, 1940.

—, ed., *Propaganda and Dictatorship,* Princeton University Press, Princeton, 1936.

Commission on Freedom of the Press, *A Free and Responsible Press*, University of Chicago Press, Chicago, 1947.

Doob, Leonard W., *Propaganda–Its Psychology and Technique*, Henry Holt & Company, New York, 1935.

Gallup, George, *Public Opinion in a Democracy*, Princeton University Press, Princeton, 1939.

—, *Public Opinion and Propaganda*, Henry Holt & Company, New York, 1948.

—, *A Guide to Public Opinion Polls*, Princeton University Press, Princeton, 1944.

Graves, W. Brooke, ed., *Readings in Public Opinion*, D. Appleton-Century Company, New York, 1928.

Lasswell, Harold D., R. D. Casey, and B. L. Smith, *Propaganda and Promotional Activities–An Annotated Bibliography*, University of Minnesota Press, Minneapolis, 1935.

Lippmann, Walter, *Public Opinion*, The Macmillan Company, New York, 1922.

Odegard, Peter H., *The American Public Mind*, Columbia University Press, New York, 1930.

The Public Opinion Quarterly, Princeton University Press, Princeton, 1937- .

Robinson, Claude E., *Straw Votes*, Columbia University Press, New York, 1932.

Smith, Charles W., *Public Opinion in a Democracy*, Prentice-Hall, New York, 1939.

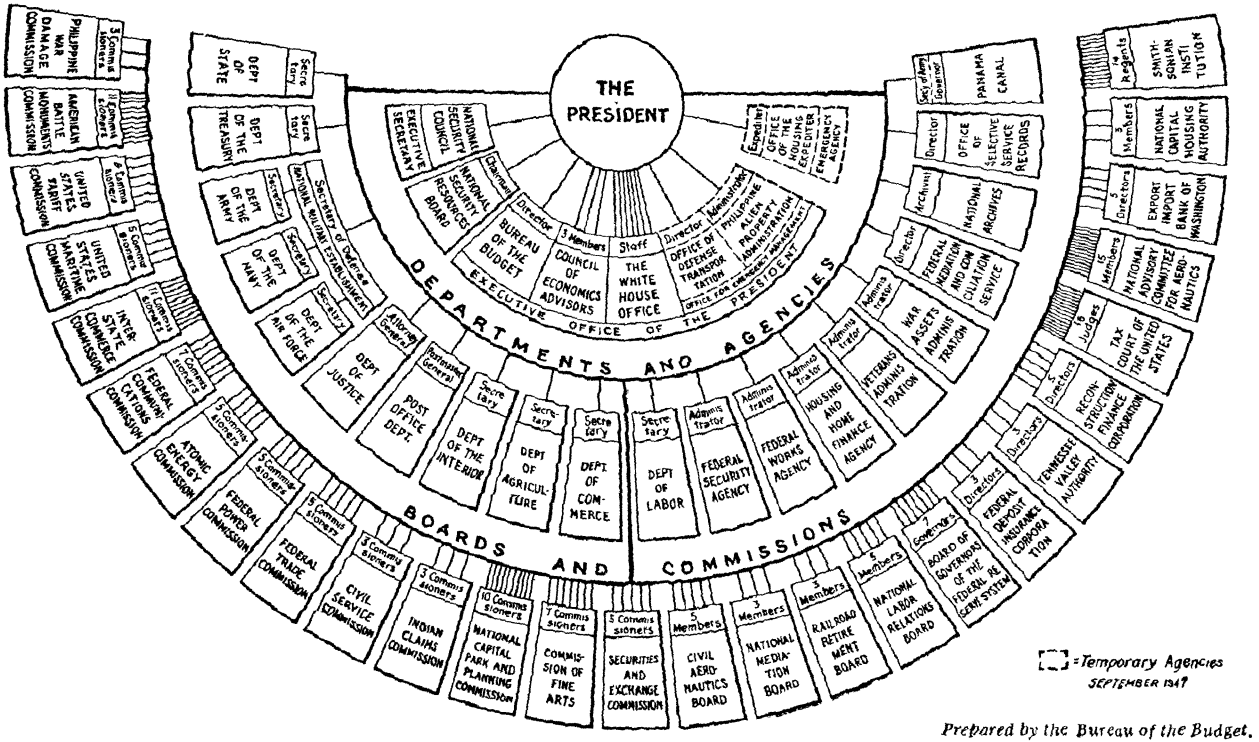
White, Llewellyn, *The American Radio*, University of Chicago Press, Chicago, 1947.

12 · *The Office of President*

Despite the doctrine of judicial supremacy, which at least until recently has been generally considered the most distinctive feature of the political system of the United States, the office of President has almost always been the focus of popular attention. Large numbers of citizens have known only vaguely about the cases decided by the Supreme Court—they have even scarcely been able to name the Chief Justice, to say nothing of the Associate Justices of the court. But the presidency has been and is constantly in the public eye. The mass of citizens may not have a very integrated knowledge of the exact functions of an incumbent of that high office; yet they follow even the personal life of the President with avid interest. The very fact that this office is so well known gives it a prestige which no other public position in the United States begins to match; moreover, that popularity surrounds the office with authority which transcends even the generous grant of power conferred by the Constitution and laws.

Evolution The men who drafted the Constitution of 1787 held divergent views in regard to almost every public question. Particularly is this apparent in the provisions which they made for the position of chief executive. Some of them felt that an hereditary kingship might best serve the public weal; others recalled the arrogance of the colonial governors and were reluctant to take any steps that might eventually create a President who would display that characteristic. However, in general the delegates inclined toward a reasonably strong executive, knowing all too well the trials and tribulations of a government which had no single leader at its helm. The office, then, as it was set up under the terms of the Constitution,[1] was no inconsiderable one. Moreover, with such men as George Washington, Thomas Jefferson, and James

[1] Article II of the Constitution deals with the executive branch and is largely devoted to the office of President.



Prepared by the Bureau of the Budget.

Madison as its first holders, it at once assumed a luster which was not enjoyed by legislative or judicial positions. Nevertheless, despite its auspicious beginnings, the presidency suffered some deterioration under the administrations of such exemplars of mediocrity as Tyler, Fillmore, and Pierce.

Fortunately, Lincoln came along before too much weakening had taken place and the presidency again assumed a commanding position. There have been such nonentities as Arthur and Harding in the White House since the days of Lincoln, but the general level has never fallen to the depths which were characteristic of the period between the galaxy of distinguished and able first holders and the election of Lincoln. Indeed the office has taken unto itself more and more prestige and authority as the years have passed, until at present it stands at the very apex of the pyramid of American government. It is sometimes said that no office in the world has as far-reaching powers as that of the presidency.

General Status of the Expanded Office No matter whether the presidency is ranked above, with, or below the executive offices in other countries on the basis of final authority, few would deny that it has developed into a position which the forefathers did not envision. The writings and debates of the early leaders of the republic show quite clearly that the President was conceived of as more a titular executive than as the actual wielder of extensive power. The honor attached to the chief executiveship was to be great; the formal role was given first place; but the day-to-day activities were not regarded by the framers as particularly outstanding or indeed arduous. The striking development which has made the President the actual as well as the titular leader of the country is variously interpreted by students of government as well as by the people. For the most part, the former regard what has taken place as logical, although perhaps accompanied by certain dangers. Professor William B. Munro declares: "It [the presidency] was certain to become the center of federal authority and the symbol of national unity." [2] Professor E. S. Corwin regards the change as "the direct consequence of Democracy's emergence from the constitutional chrysalis," but adds, "That, on the other hand, these developments leave private and personal rights in the same strong

[2] See his *The Government of the United States*, rev. ed., The Macmillan Company, New York, 1937, p. 156.

position as they once enjoyed would be quite impossible to maintain." [3] Many citizens view the transformation—the word is used advisedly, for the evolution has brought changes so far reaching that recent presidential administrations are scarcely on the same plane as that of Thomas Jefferson—with distinct alarm.

What of the Future? Thus far, the results of the "new presidency"—to use Professor Corwin's designation [4]—have not been of such a nature as to furnish a basis for a categorical conclusion. There was a disposition a few years ago to maintain that the position laid such unparalleled responsibilities on the shoulders of the incumbent that no human being could long endure. The fatal illness of Woodrow Wilson, the death in office of Warren G. Harding, and the early decease of Calvin Coolidge after surrendering the presidency, were all cited as proof of such a contention. However, the record of Franklin D. Roosevelt during years of unsurpassed domestic and international difficulties seemed to refute such an assumption. The election results of 1936 and 1940 indicate without much doubt that the rank and file of the people favor the more prominent role of the President, at least during periods of national emergency. Thus far, despite all of the gloomy prophecies, the country has managed to survive, though pressed within and without by the most complicated and fear-generating situations. Moreover, there has been no discontinuance of elections, no establishment of concentration camps,[5] and comparatively little diminution of freedom of speech and of the press. Professor Corwin points out that the office of President has become "dangerously *personalized*" by the striking development which we have noted, both because the leadership which it provides is "dependent altogether on the accident of personality," and because no agency is at present set up in the government to furnish unbiased and compulsory advice.[6] It is too early to see clearly what the final result will be.

[3] See his *The President: Office and Powers*, New York University Press, New York, 1940, p. 316.

[4] *Ibid.*

[5] The entry of the United States into World War II led to the establishment of camps for certain enemy aliens and the removal of citizens with Japanese antecedents from their homes on the Pacific Coast. There were still no concentration camps in the ordinary sense.

[6] *Op. cit.*, p. 316

CHOICE OF A PRESIDENT

The framers of the Constitution wanted to safeguard the presidency against the dangers which they visioned as attendant upon mob choice and consequently arranged a rather cumbersome system of indirect election.[7] The comparatively small number of enfranchised were to choose representatives to a reasonably small electoral college, which was vested with the power to canvass the field of available candidates and make the best possible choice. Political parties were given no part in the process; indeed no provision at all was made for nominations. It has already been pointed out in connection with the chapters on political parties [8] that the carefully drawn-up plans of the framers did not prove very practicable. The election of 1800 saw an embarrassing situation fraught with danger, which the men of 1787 had not anticipated. The addition of the Twelfth Amendment modified the arrangement by specifying a separate casting of electoral votes for President and Vice-President, but even this step was not enough to save the system from substantial modification by usage. Political parties displayed surprising vigor and soon assumed the function of nominating candidates, not only for the presidency but also for presidential electors. Inasmuch as the nomination of a President seems to fall more directly under the activities of political parties than at this point, it has been dealt with in some detail in connection with the national party conventions.[9] Assuming that the student is already familiar with that preliminary step, we will proceed to trace the choice of a President beyond that point, pausing a moment to look at presidential primaries.

Presidential Primaries The adoption of the direct primary as a device for the nomination of candidates for state and local office was regarded by its proponents as an argument for its ex-

[7] It is interesting to note that some members of the convention apparently felt that the President should be closer to the people than was eventually planned. Alexander Hamilton's suggestion included election of the President by manhood suffrage, while Gouverneur Morris, probably much influenced by the opinion expressed in John Adams' *Defence of the Constitutions of Government of the United States of America*, argued that the President should be the mediator between two classes in society and much closer to the people than the legislators. See on this subject C. Warren, *Making of the Constitution*, Little, Brown & Company, Boston, 1937.

[8] See Chaps. 8 and 9.

[9] See Chap. 9.

pansion to the presidential arena. More than twenty states, following the lead of Wisconsin in 1905, ordained that the delegates to the national party conventions should be chosen not by state and local party conventions but through use of the direct primary.[10] A number of states went further and stipulated that the voters in naming their representatives to the national conventions should instruct them as to which candidates they were to support. For a few years the new scheme seemed to be attended with considerable promise, great enthusiasm being displayed for it. But a majority of the states refused to adopt it and hence there was no opportunity for the popular mandate to control the national conventions. Since 1916 not a single state has found it desirable to adopt presidential primaries, while a substantial proportion of those which had already put them into effect before that time have abandoned them.[11] At the present time presidential primaries do not play any very important part in nominating presidential candidates; some of the outstanding candidates go so far as to refuse to enter their names in the states which continue to make use of this device. Nevertheless, presidential primaries still occasion considerable public interest, especially in those states which hold their primaries well before the conventions.

The Electoral College After the national party conventions have designated the candidates for the office of President, the state and local party organizations, either at conventions or primaries, proceed to nominate candidates for seats in the electoral college.[12] Each state is apportioned as many electors as it has seats in Congress. Inasmuch as the positions are purely formal in importance and carry no compensation, at least of consequence, no great amount of competition accompanies the process of selection. Ordinarily some attempt is made to honor outstanding members of the party, but not infrequently nominees will be so obscure as to be utterly unknown to the general public. The lack of importance attached to the individual electors is such that some states do not even list their names on the ballot, for that would add to the ex-

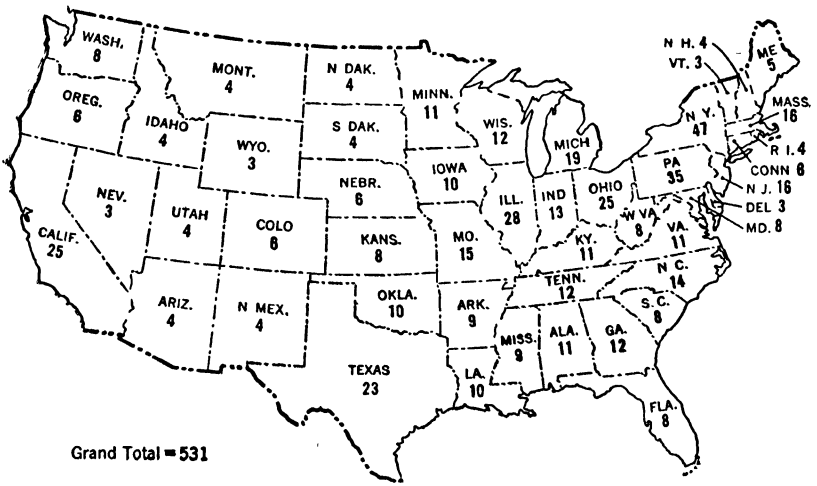
[10] In 1916 more than half of the delegates to the national conventions were chosen in this manner.

[11] Iowa, Minnesota, Vermont, Montana, North Carolina, Indiana, Michigan, and North Dakota have all abandoned presidential primaries.

[12] In some states this is done before the national conventions are held.

pense of holding the election without serving any useful purpose.[18] In casting his ballot the average voter doubtless thinks of himself as directly supporting the presidential nominee whom he favors—it is questionable whether in most instances he could even name the electors for whom he has voted.

While the Constitution intended to confer wide discretion on the electors in the choice of a President, custom has ordained that



Bureau of the Census.

PRESIDENTIAL ELECTORS BY STATES

these officials act in a purely perfunctory manner. Indeed if an elector dared to cast his ballot for any other than the official nominee of his party, it would be the occasion for front-page headlines in the newspapers—if not for lunacy proceedings against him. There is a common misconception to the effect that the electors from the various states journey to Washington in order to cast their votes—possibly the term "college" implies at least a brief gathering in one place. Actually the electors assemble only in their respective state capitals, never as a body in the national capital. A

[18] Some sixteen states omit names of electors from the ballot and substitute names of the presidential and vice-presidential candidates. See L. E. Aylsworth, "The Presidential Short Ballot," *American Political Science Review*, Vol. XXIV, pp. 966-970, November, 1930.

national law requires that the electors meet on the first Monday after the second Wednesday in December following the elections in November. At this time they vote separately for President and Vice-President, arrange to have lists prepared showing the results of their balloting,[14] and send these lists in duplicate, together with their certificates of election, to the President of the Senate in Washington.

Congressional Counting of Electoral Votes The Twelfth Amendment of the Constitution provides that the "president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." On the sixth day of January the Senators and the Representatives meet together in the chamber of the House, with the President or President *pro tempore* of the Senate presiding. Each house designates two tellers—one Democrat and one Republican—who receive and tabulate the returns as they are opened by the presiding officer. The candidate receiving the majority of electoral votes for President is declared elected by the presiding officer and the results are recorded in the journals of the two houses. Likewise a Vice-President is formally announced. Inasmuch as every citizen has known the outcome since early in November, it may be seen that these proceedings are purely formal, unless perchance no candidate shall have received a majority of the vote or unless a decisive number of electoral votes are in dispute.

Disputed Electoral Votes Occasionally there may be some question as to the electoral votes of a state, although this rarely happens at present. Prior to 1887 there was no definite procedure for settling cases in which there is uncertainty. In 1876 the two candidates ran neck to neck; Tilden had a plurality but not a majority of the electoral votes, while the electoral votes of four states were in dispute, all of which Hayes required to be elected. In order to handle the situation a special commission of five Senators, five Representatives, and five Supreme Court judges was set up and charged with deciding to whom the disputed votes would go. Since the Senate was controlled by one party and the House of Representatives by the other, their ten members of the commission included five Democrats and five Republicans. It was expected that

[14] Actually all votes are cast for one person under the system now used by all states, for all electors are of one party.

the five judges would be above partisanship, but in the voting three of them consistently upheld the claim of the Republicans to all of the challenged votes, thus leading to the election of Hayes by a margin of a single vote. The Democrats cried out that the election had been stolen from them. After a decade, when they came into power with the election of Cleveland, the resulting resentment led to the passage of a statute, which it was hoped would obviate a repetition of this situation.

Provisions of the Act of 1887 Under the terms of the Electoral Count Act of 1887 disputed electoral votes are supposed to be investigated and decided by the states involved. If a state is able to straighten out such confusion within six days of the date set for the meeting of the electors, the federal government will accept its decision without question. If no settlement can be reached and two sets of electoral votes result, the two houses of Congress, meeting separately may try to agree on a choice. If the houses fail in their attempt, any set of returns approved by the governor of the state involved shall be counted. Finally, if every one of these possibilities is abortive, the state loses its voice in electing that particular President. The majority of the states have not carried out their responsibility under the act of 1887 to set up the necessary machinery for handling cases of dispute; but fortunately there has been no recurrence of the trouble manifest in 1876.

Lack of a Majority If the electoral vote is so divided that no candidate has a majority of votes, the House of Representatives is charged with electing a President from among the highest three,[15] each state having one vote. A bare majority of votes in the House is sufficient for this purpose. Although there seemed some possibility that the election of 1912 might be thrown into the House of Representatives, President Wilson received a majority of the electoral votes although by no means a majority of the popular vote.[16] The last election of this sort was that of 1825, when the House chose John Quincy Adams in preference to Jackson, Crawford, and Clay. Any migration from the biparty to a multiple-party system, even if only three parties were to be used, would doubtless result in

[15] See Amendment XII.

[16] Wilson received 435 electoral votes, Roosevelt 88, and Taft only 8. However, Wilson's popular vote was some six million in contrast to about seven and one-half million votes received by his opponents.

elections by the House of Representatives or, what is more likely, a complete overhauling of the electoral system.

Minority Presidents Ordinarily the winning candidates poll both a majority of the electoral votes and a majority of the popular votes, although the exact ratio may be far from the same in each case. However, on a few occasions candidates who have received less than a majority of the popular votes have been declared elected President. Both Lincoln and Wilson were in their first terms plurality Presidents—that is, they did not receive a majority of the popular votes, but they did poll more votes than any other candidate. In the Hayes-Tilden election, Hayes, the successful candidate, actually received about three hundred thousand votes fewer than Tilden, while Harrison was elected President in 1888, despite the fact that his popular vote fell something like one hundred thousand behind Cleveland's.[17]

Direct Popular-election Proposals As a result of the several cases which characterized the last half of the nineteenth century considerable popular sentiment developed in favor of the substitution of direct popular election for the cumbersome and outmoded electoral college. It is probable that a frequent recurrence of "minority" Presidents during recent years would have resulted in some change, but since 1888 no President has received a smaller popular vote than his opponent and only one plurality President has held office. Therefore, while almost everyone admits that the present system leaves something to be desired, there is no general agreement as to what substitution might be advantageous—and, more than that, no widespread sentiment back of any modification at all. Until some future electoral experience focuses the attention of the people on this matter, it is likely that the present arrangement will remain in effect.[18]

Taking of Office The traditional time for the President to take office was long March 4, a date that offers some advantages

[17] For the exact figures, see E. E. Robinson, *The Presidential Vote*, 1896-1932, Stanford University Press, Stanford University, 1934.

[18] A constitutional amendment, sponsored by Senator George W. Norris, which provided for the abolition of the electoral college as a piece of machinery but retained the plan of voting by states and election by plurality in a majority of the states was introduced into the Senate in 1934. It twice narrowly failed to get the requisite two-thirds vote (forty-two to twenty-four on May 21 and fifty-two to twenty-nine on May 22).

over January 20, which has been in effect since October 15, 1933. For one thing, the weather conditions in March are usually more favorable for the inauguration ceremonies which are by custom held out of doors. However, the old delay of some thirteen months between the election of members of Congress and their exercise of authority was so intolerable that it finally led to the Twentieth, or "Lame Duck," Amendment. Since it provided that Congress convene on the third of January, it was felt that the date of inaugurating a President should be advanced to January 20, so that a new Congress would have a new President with whom to work.

Filling of Vacancies in the Presidency The framers of the Constitution naturally gave their attention to questions which were particularly burning when they assembled, leaving the details of other problems to be worked out in the future. Among other omissions was that of a provision for succession to the presidency in case the Vice-President should die or become incapacitated. Nor was any rule laid down as to what should be done if a President-elect died before taking office.[19] In 1792 Congress enacted legislation which provided that the president *pro tempore* of the Senate should be next in line after the Vice-President and then the Speaker of the House. In 1886 the Presidential Succession Act was passed which named the Secretary of State as next in line after the Vice-President and then other cabinet members according to the seniority of their offices. Shortly after taking office in 1945, President Truman sent a special message asking Congress to make the Speaker of the House and the president *pro tempore* of the Senate respectively the immediate successors in precedence to cabinet members.[20] After some delay Congress in 1947 enacted such legislation. The Twentieth Amendment clarified the situation somewhat by providing that the Vice-President-elect shall become President if the President-elect dies before inauguration. Moreover, if a President-elect has not been chosen or if he fails to qualify for office, the Vice-President-elect is authorized to "act as President until a President shall have qualified."

[19] The Constitution authorizes Congress to provide for the filling of the office in cases of removal, death, resignation, or inability.

[20] This proposal was quickly accepted by the House but shelved by the Senate until 1947.

FACTORS THAT ENTER INTO THE CHOICE OF A PRESIDENT

Geography Despite their positions of legal equality, the forty-eight states have by no means taken turns in furnishing a President. Indeed, even some of the older and more populous states have had nothing like their share. Until 1928 no state west of the Mississippi had contributed a chief executive.[21] The southern states, with the exception of Virginia which sometimes claims to be the "mother of Presidents," [22] have not fared well. Even a state as large and wealthy as Pennsylvania can make no brave showing with native sons who have filled the presidential chair. Of the nine holders of the office since the beginning of the century, three have hailed from Ohio, two from New York, and one each from New Jersey, Massachusetts, California, and Missouri. In general, then, geography does not enter into the choice of a President to the extent that it might.

Pivotal States So-called "pivotal" states are supposed to be favored when it comes to the choosing of a chief executive, although there is some question as to why certain states are popularly included in this category while others are omitted. States that may be depended upon to support one party's candidate, irrespective of his residence or his qualifications, are not given much consideration in nominations, for parties reason that these states are already in the "safe" column. Thus the southern states are not strong claimants for Democratic consideration because their record of party loyalty is virtually without stain. But a populous state which is fairly evenly divided politically is another matter—picking one of its citizens may swing the state to support a particular party. Ohio and New York have long been regarded as outstanding examples of pivotal states, and hence they can display very bright records as far as occupants of the White House constitute a criterion.

Time The character of the times has something to do with the choice of a President. If complicated internal or external problems are demanding attention, it is likely that a man who has a record of vigorous and aggressive action in public office will be

[21] Herbert Hoover was a native of Iowa but had held legal residence for many years in California.

[22] Virginia contributed an imposing number of the earlier Presidents, but has not been frequently honored during recent decades.

designated. Possibly the man of most impressive background will be ignored and someone less experienced will be taken, but it is quite improbable that a "dark horse" will be selected. The voters at such a time will be eager for a strong, decisive leader, and consequently they will not be attracted by a candidate who has not had much public acclaim or much experience in handling important affairs.[23] Conversely, if the government has pursued a very aggressive policy for several years and if a national emergency has just been experienced, the people may unconsciously desire a weak incumbent in the presidential office. They want to rest for a time from governmental demands; they desire officials who will not seek fame from ambitious public achievements; and consequently they favor a candidate whose past record indicates that he will be content merely to fill the office.[24]

Experience Although the people of the United States have been inclined to hold professional politicians in contempt, a considerable number of their Presidents have been drawn from the ranks of those who, if not professional politicians, certainly have been long active in politics. Calvin Coolidge devoted the major part of his adult life to holding local office in Northampton, to legislative and executive activity in Massachusetts, and finally to the vice-presidency and presidency of the United States. Franklin D. Roosevelt and Theodore Roosevelt did little else than interest themselves in the politics of New York and Washington after leaving Harvard. Harding had for years devoted himself to Ohio politics before he entered the Senate and finally moved over to the White House. Taft, although a lawyer by profession, had given much of his time to Ohio politics before serving as governor general of the Philippines and a member of the President's cabinet. Of the chief executives since 1900 only Woodrow Wilson and Herbert Hoover had achieved eminence in fields other than politics before they entered the White House,[25] and even they had not gone directly from edu-

[23] There were many who considered the lack of previous political experience as a serious handicap in the case of Wendell Willkie.

[24] Professor William B. Munro has developed this thesis in a convincing manner in his "The Law of the Pendulum," in *The Invisible Government*, The Macmillan Company, New York, 1928, Chap. III.

[25] Taft is sometimes regarded as another case of one who had achieved eminence before entering public life. Certainly as Chief Justice of the Supreme Court he deserves distinct recognition in the legal field, but whether such a reputation should be accorded to his earlier career is a question.

cation and engineering to the presidency—Wilson had served as governor of New Jersey, while Hoover had been well known as Secretary of Commerce. Membership in the bar may serve as a convenient occupational relationship, although more often than not such a professional connection has been largely nominal. Lawyers first of all become active in politics; then they get themselves elected as state governors or United States Senators; finally they are elevated to the office of chief executive—immediate transfer from active legal practice to the White House is most unlikely.

Danger of a Long Political Career On the other hand, it is not well for one who is ambitious to hold the presidency to have had too long and particularly too spectacular a political career. Despite the large sphere which we accord to politicians—perhaps the largest to be observed in any country, we still have an innate suspicion of the political gentry. Hence if an aspiring candidate has been too closely identified in the public mind with politics, especially of the machine variety, he may find scant enthusiasm for his ambition. Holding local office does not seem to lead toward the presidency at all, although it might be supposed that experience as mayor of New York City or Chicago would be reasonably valuable. A governorship in a pivotal state, membership in the President's cabinet, or a seat in the national Senate seem to offer the best opportunities to one who is eager to climax his career by serving his country as President. Of the nine chief executives during the present century, four have held office as governors of states, one has served as governor general of a territory, three have been Senators, and two have been well known as cabinet members.

Business Experience Interestingly enough, business executives seem to be lightly considered for the first public post in the country. Wendell Willkie, had he won election in 1940, might have broken the long-established tradition against recognition of business experience.[26] Of the recent Presidents only Truman, Harding, and Hoover can be even remotely connected with business careers and in no case has the association been impressive. Just why there has

[26] There is some difference of opinion as to how much business experience Willkie had had. Despite the titular position which he held in the Commonwealth & Southern Corporation, some critics declare that he was largely a public-relations man.

been so little disposition to honor successful business men it is difficult to see, especially when the national psychology has accorded a prestige to business careers which is not to be equaled anywhere else in the world. In many respects the management of a large corporation should confer upon men of affairs experience that might be quite valuable in the presidency. As it is, we treat politicians with more than a little contempt and business executives with more than a little respect; yet we elect the former as chief executives while at the same time we set up a bar against the latter as far as the presidency is involved.

Eminence Is it the practice in the United States to select eminent men for elevation to the presidency? The forthcoming replies to this query will give support to almost any point of view. There are, of course, numerous cases of outstanding men who have not been awarded that honor, despite their willingness to accept its inherent responsibilities. However, there is but one office of President with which to reward distinguished men, which, of course, means that even eminence can be recognized only for a few. The mere fact that certain men of great merit and wide reputation have been ignored does not in itself necessarily mean that the holders of the presidential office have been nonentities.

The Judgment of Foreign Observers Writing half a century ago, Lord Bryce expressed surprise that the Presidents of the United States have been on the whole so mediocre: "Since the heroes of the Revolution died out with Jefferson, Adams, and Madison, no person except General Grant has reached the chair whose name would have been remembered had he not been President, and no President except Abraham Lincoln has displayed rare or striking qualities in the chair." [27] A fellow countryman, Professor H. J. Laski, has reflected the same point of view more recently, maintaining that American Presidents have for the most part been distinctly mediocre in contrast to British prime ministers who, with the possible exception of Sir Henry Campbell-Bannerman, have for a hundred years been men of outstanding ability.[28] It is probable that these two men are fairly typical of foreign observers, although when they deliver

[27] See his *The American Commonwealth*, 2 vols., The Macmillan Company, Vol. I, New York, 1910, Chap. 8.

[28] See his *Parliamentary Government of England*, The Viking Press, New York, 1938.

lectures or write for consumption in the United States a more flattering tone may be adopted.[29]

American Presidents and Foreign Executives Compared While American students willingly confess the shortcomings of chief executives such as Tyler, Fillmore, McKinley, and Harding and do not ascribe the most brilliant accomplishments to numerous others, including Taft, Coolidge, and possibly Hoover during the present century, it is difficult for them to see that foreign governments have done perceptibly better in picking their executives. Except possibly for Poincaré, the presidents of France under the Third Republic were certainly more ordinary than the corresponding officials in the United States. The premiers of France surpassed the French presidents in eminence, but many of them were at best mediocre. British prime ministers are frequently placed on a pedestal by Englishmen and indeed some of them would be adjudged great men under the standards of any country. Nevertheless, not all are examples of first-rate ability in the eyes of many American students of government. The first Presidents of the United States—Washington, Adams, Jefferson, and Madison—set a very high standard which was sadly lowered by most of their nineteenth-century successors, although Abraham Lincoln marked a shining exception and Andrew Jackson and Grover Cleveland would be accorded outstanding ability by many competent judges. During the twentieth century the general record seems somewhat superior to that of the nineteenth.

QUALIFICATIONS, TERMS, AND PERQUISITES OF THE OFFICE

Qualifications The formal qualifications which are established by the original Constitution are neither numerous nor particularly onerous. A minimum age of thirty-five years is expected, along with natural-born citizenship in the United States. Moreover, candidates are required to have resided in the United States for at least fourteen years, although such residence does not necessarily have to be consecutive.[30] Before assuming office a President-elect

[29] For example, compare the above book with Laski's *The American Presidency,* Harper & Brothers, New York, 1940.

[30] The question was raised by opponents as to whether Herbert Hoover met the requirement of residence. He had not been a resident for fourteen consecutive years immediately prior to his election, but had resided in the United States considerably more than fourteen years all told.

must take the following oath: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States," [31]

Qualifications imposed by custom are more numerous and perhaps more burdensome. As noted in the discussion of the factors that enter into the choice of a chief executive, geography, time, experience, occupation, and ability are all to be considered as intimately related to the actual specifications laid down by the Constitution. It may be added that convention has also ordained a more advanced age than the thirty-five years stipulated by the Constitution itself—men under fifty are rarely nominated. Although women are equally eligible with men for the office, tradition has placed a very weighty obstacle in their path to that office, which, of course, has never as yet been surmounted. Alfred E. Smith sometimes contended that he was crucified because he was a Roman Catholic.[32] How effective a bar religious affiliation may be it is difficult to ascertain; something doubtless depends upon the spirit of the times. It seems probable that less objection would be made to Catholic religious tenets now than during the 1920's. Nominal membership in a conventional religious organization—the Methodist, Baptist, Congregational, or Episcopalian churches—is frequently regarded as beneficial, although persistent activity does not seem to be expected. Married men probably have an advantage over bachelors or widowers—at least Presidents Cleveland and Wilson found it desirable to marry while occupants of the White House.

Term There was a good deal of sentiment in the convention of 1787 in favor of a presidential term of seven years with a bar against re-election—as a matter of fact, such a provision was included in an earlier draft of the Constitution. Finally, it was decided to provide a four-year term and to permit re-election. Nothing was said as to how many terms a single incumbent might be allowed, but Washington and Jefferson established a precedent of limiting the terms to two. Several Presidents during the succeeding century and a half felt that conditions justified breaking the two-term tradition in their own case, and U. S. Grant and Theodore Roosevelt took practical steps to let down custom's bars. However, it remained

[31] Art. I, sec. 7 of the Constitution.
[32] See his *Up to Now*, The Viking Press, New York, 1929, p. 412.

for Franklin D. Roosevelt to demonstrate that the two-term tradition, which many citizens supposed was as firmly rooted in the political system of the United States as the Constitution itself, could under circumstances of national emergency and world chaos be ignored.

Proposals to Limit the Incumbency of a Single President In 1912 the Democrats included in their platform a plank which advocated a constitutional amendment prohibiting re-election. The following year the Senate actually adopted a resolution which called for an amendment extending the term of Presidents to six years and forbidding re-election. However, the House of Representatives failed to concur, although its committee on judiciary made a favorable recommendation. Several years later William Howard Taft proposed a similar modification in his *Our Chief Magistrate and His Powers*,[33] but other more pressing matters claimed the public attention—World War I, a paralyzing depression, and so forth—so that nothing came of what had seemed in the years immediately following 1912 a not only meritorious but a promising movement. When 1940 approached and it appeared that President Franklin D. Roosevelt would at least accept a third term, even if he did not actively seek it, the popular interest arose again and a number of speakers and writers displayed the most intense feeling on the matter. Nevertheless, despite all of the predictions made even by those who were closely in touch with popular psychology, the third-term issue did not assume the anticipated major proportions in the 1940 campaign. Following the third election of Franklin D. Roosevelt the proposal was revived in the Senate to amend the Constitution in such a way that a single six-year term would be prescribed for a President. In 1947 Congress finally sent to the states for ratification a proposed amendment limiting a President to two full four-year terms.

Financial Allowances The office of President carries with it a salary of $75,000 per year and enough allowances to bring the total amount to more than $300,000. The salary is regarded as a personal item and may be spent by the President as he pleases. The allowances for White House maintenance, entertainment, clerical hire, travel, and miscellaneous are, however, limited to those purposes, with the result that any balances at the end of a fiscal year revert to the Treasury, not to the pocket of the President himself.

[33] Columbia University Press, New York, 1916, p. 4.

In addition, the chief executive and his family are given the White House as a residence and may make use of an official yacht and airplane for cruising purposes and visits. To set a value on these privileges in order to compare fairly the income of a President with those of corporation officials and owners of private business is an almost impossible task. However, even if the various allowances and perquisites should be valued at $700,000 or $800,000, the President receives less than several foreign chiefs of state and has at his disposal much less than the wealthiest industrialists of the United States.

Adequacy of Remuneration There is some difference of opinion as to how adequate the presidential salary and allowances are. Advocates of thrift and simplicity do not see why it is necessary to devote such large amounts to this purpose. On the reverse side, others, more interested in social prestige than expense, point to the limited facilities of the White House in comparison with the palaces and castles of foreign executives, to the rather shabby furnishings of certain rooms in the White House, and to the far from regal entertainments that have usually been given by Presidents. Few chief executives find it possible to save anything from their salaries—although Calvin Coolidge was a notable exception; but on the other hand it is not known that many have had to dip into private resources deeply or incur debt.

Immunities The courts have ruled that the President is, except in the case of impeachment, immune from actions directed against him by other branches of the government. He cannot, therefore, be required to appear in court as a defendant or a witness, although he may consent to serve in the latter capacity. Writs of mandamus or injunction which name him cannot be issued by the courts.[34] Contempt-of-court charges are never aimed at the chief executive. Even in criminal cases it would be out of the question to haul him before other than an impeachment court, for being the wielder of the pardon power no punishment inflicted by a court would stand against his wishes.[35]

Social Status Great honor is attached to the office of President. He is accorded military salutes when he reviews the land or sea forces and a salvo of guns when he enters a foreign port. Wherever he goes he is welcomed by crowds of people and officially

[34] See *Mississippi* v. *Johnson*, 4 Wallace 475 (1867).
[35] See *Kendall* v. *United States*, 12 Peters 524 (1838).

received by state and local representatives. Likewise, it is a very ceremonious occasion when he delivers a message to Congress in person. If he perchance wants to speak to his fellow citizens over the radio, the national networks will go to great trouble to clear time for him, irrespective of how much havoc is wrought with regular programs. Nevertheless, the President does not appear at ordinary social functions outside of the White House, for a tradition has long existed that the President is not the leader of society in the national capital but is rather above society. So the President entertains the Supreme Court justices, the members of his cabinet, and the diplomatic corps at dinners each year and receives the Senators and the Representatives at state receptions, but except in the case of his cabinet members he does not accept return invitations. Considering the commanding position which the royal family occupies in British social life, it may appear strange that the President should hold himself aloof. But the President, unlike the king, has heavy responsibilities in connection with the day-to-day operation of the government; and if he had to assume in addition an elaborate round of social engagements, his existence might well become intolerable. The Vice-President substitutes for the chief executive as the social leader of Washington and spends his time in an endless succession of dinners, receptions, and other social occasions —unless he happens to be a "Cactus Jack" Garner who "can't be bothered with such stupid things as social affairs."

THE VICE-PRESIDENCY

The framers of the Constitution were not too enthusiastic about providing for a Vice-President and, had they authorized Congress to choose the President, they might have omitted the vice-presidency. Benjamin Franklin took the position so lightly that he proposed to have its holder addressed as "His Superfluous Highness." Under the scheme finally accepted for selecting a chief executive it was essential that someone be designated to act for the President in cases of death or disability. So the office of Vice-President was created, with qualifications similar to those laid down for the chief executive.[86]

Duties Inasmuch as it was thought desirable to give the Vice-President something to do besides awaiting the death or in-

[86] See the Constitution, Art. II, sec. 1.

capacity of his chief, the framers ordained that he should preside over the sessions of the Senate. The Senate has its own president *pro tempore* who takes the chair when necessary and hence the Vice-President is not absolutely essential to the functioning of that body. Nevertheless, most Vice-Presidents take their duties in this connection quite seriously—in some instances a little too seriously to suit the Senators who feel very able to run their own business.[37] Especially if the Senate is disposed to split into factions or to balk at working with the President, a tactful yet strong Vice-President, whom the Senators respect, may serve a very useful purpose.[38] It has already been pointed out that the Vice-President and his wife are the social leaders of Washington.[39] Needless to say, this in itself is more or less of a full-time job. Vice-Presidents may or may not be invited by the chief executive to sit with the cabinet.[40]

Succession to the Presidency Seven Presidents have died during their terms and their Vice-Presidents have taken over the office. The Constitution does not state that a Vice-President in such an event shall assume the Presidency—it merely orders that the duties of the chief executive "shall devolve upon the Vice-President."[41] Actually every one of the seven whom death has permitted to climb out of a certain obscurity into the floodlighted office of President has taken the title "President" and for all practical purposes not differentiated himself from regularly elected holders of the office. No case of impeachment has made a vacancy for a Vice-President; nor has there thus far been a case in which "the inability to discharge the powers and duties" on the part of the chief executive has eventuated in the moving up of the Vice-President. Since no machinery is provided to determine under what circumstances a President may be considered unable to discharge his duties and since both seriously ill Presidents and their families are extremely reluctant to surrender authority, there has been not even temporary

[37] Vice-President Dawes may be cited as an example when he sought to change the Senate rules.

[38] Vice-President Garner was generally credited with exercising great influence.

[39] Vice-President Curtis had no wife and was responsible for the dispute between Mrs. Gann, his hostess, and Mrs. Longworth, wife of the Speaker, as to precedence.

[40] Vice-President Coolidge was the first twentieth-century Vice-President to sit with the cabinet, though John Adams really started the precedent.

[41] Art. II, sec. 1.

promotion of the Vice-President although that has at times seemed desirable. In the case of state governors mere absence from the confines of the state may automatically confer the power upon the lieutenant governor to act as governor, but the absences of Presidents Wilson, Franklin D. Roosevelt, and Truman from the United States indicate that there is no corresponding practice in the national government.[42]

Selected Bibliography

Agar, Herbert, *The People's Choice*, Houghton Mifflin Company, Boston, 1933.

Brogan, D. W., *Government of the People*, Harper & Brothers, New York, 1933. Parts IX-X.

Corwin, E. S., *The President: Office and Powers*, New York University Press, New York, 1940.

Ewing, Cortez A. M., *Presidential Elections, from Lincoln to Franklin D. Roosevelt*, University of Oklahoma Press, Norman, 1940.

Hatch, L. C., *A History of the Vice-Presidency of the United States*, rev. and ed. by F. L. Shoup, American Historical Society, New York, 1934.

Hurd, Charles, *The White House*, Harper & Brothers, New York, 1940.

Laski, H. J., *The American Presidency*, Harper & Brothers, New York, 1940.

Overacker, Louise, *The Presidential Primary*, The Macmillan Company, New York, 1926.

Robinson, E. E., *The Presidential Vote, 1896-1932*, Stanford University Press, Stanford University, 1934.

——, *The Presidential Vote, 1936*, Stanford University Press, Stanford University, 1940.

Schulz, G. J., *Election of the President of the United States by the House of Representatives, Senate Document 227*, Sixty-eighth Congress, second session, Government Printing Office, Washington, 1925.

Small, N. J., *Some Presidential Interpretations of the Presidency*, The Johns Hopkins Press, Baltimore, 1932.

Stanwood, E., *History of the Presidency*, 2 vols., rev. ed., Houghton Mifflin Company, Boston, 1928.

[42] See Corwin, *op. cit.*, pp. 333-339.

Stein, C. W., *The Third-Term Tradition,* Columbia University Press, New York, 1943.

Taft, W. H., *Our Chief Magistrate and His Powers,* Columbia University Press, New York, 1916.

13 · *The Powers and Duties of the President*

The developments which were noted in the preceding chapter have, of course, added in large measure to the powers and duties of the chief executive. From an official whom John Adams believed should be primarily a mediator between the aristocrats and the poverty-stricken or whom George Washington regarded as a sort of limited monarch designated for a given term, the President has become the center around which the entire government turns. He is so constantly in the public eye that he finds it difficult to retain any private life at all—even when he desires to stroll or motor for relaxation he is invariably accompanied by secret service operatives. Indeed, in the minds of large numbers of citizens he has become literally the symbol for the whole gigantic structure of the federal government.

The Executive Offices The first Presidents had no need for elaborate office organizations; a handful of secretaries and clerks could easily care for the correspondence and business which had to be dealt with. As the office has become more commanding, its routine as well as its important duties have expanded until an elaborate organization is required. The early Presidents could find office space for themselves and their secretaries within the confines of the White House itself, but the more recent incumbents would be aghast at the very idea of working with such simple facilities. The space to the west of the White House has been given over to the site of executive offices, which have been added to again and again; even so, they cannot accommodate the numerous staff which has been recruited by the President to assist him in performing his official duties. Some of the immediate entourage as well as the Bureau of the Budget and other sections of the executive office of the President have taken over space in the old State building.

More than a hundred secretaries, clerks, stenographers, and guards are now required to handle the immediate duties connected with the presidential office, while budget drafting, planning, reporting, and other functions, which have been placed under the direct supervision of the President, necessitate the employment of numerous experts of one kind and another. The work of these latter agencies will be discussed in connection with subsequent chapters;[1] it remains here to consider the general operations of the executive office.

Routine Duties An enormous amount of routine work must be performed by the secretaries of the President. Mail is so heavy that it has to be delivered by post-office trucks. All of it, whether it comes from fools, serious-minded citizens, men of affairs, or politicians, is examined with some care and sorted out into piles for attention. Many of the communications can be acknowledged by sending out form letters; others are handled by the assistants to the personal secretary. The more important receive the attention of the personal secretary himself or one of the secretaries charged with appointments, public relations, and reports. Only the most important come to the desk of the President himself. But altogether the number of outgoing letters is vast.

Large numbers of interested citizens feel so close to the President that they want to share with him their wild game, fruit, handwork, artistic efforts, and almost every other conceivable possession. The task of receiving the parcel post and express packages that pour in, examining them to see that they contain no bombs, poisons, and other dangerous objects, deciding what shall be done with cherry pies six feet across, fancy turkeys, and laboriously executed fancywork, is no mean one.

Public Relations One of the principal secretaries of the President manages public relations.[2] He goes over with the chief

[1] See Chaps. 23 and 25.

[2] It may be noted that only since the Roosevelt administration has the public-relations secretary been so important. Part of Mr. Hoover's unpopularity has frequently been attributed to the fact that he had no organized method of meeting with the press. Franklin D. Roosevelt, quite aware of that shortcoming, maintained a system whereby not only he was accessible to reporters at stated periods, but also his press secretary was always available. The President also encouraged his cabinet members and other high administrative officials to hold frequent press conferences. It is said that Mr. Roosevelt believed friendly and open relations with the "fourth estate," besides

executive statements which are to be given to the press and distributes these statements to representatives of the Associated, United, and other press services as well as those large newspapers, such as the *New York Times*, which keep full-time employees stationed in the press room of the executive offices. If the newspapers have any special request to make of the President negotiations are conducted through this intermediary. At regular intervals or on special occasions, depending upon the policy of the particular President, the public-relations secretary arranges a press conference, attended by a hundred or more home and foreign newsmen.[3] On such occasions the President ordinarily receives the newspapermen in his private office, permits them to surge around him more or less informally, and replies to such questions as he feels it desirable to answer.

Callers Another principal secretary receives the requests of those persons who feel that they are entitled to discuss a matter personally with the President. When the demands on the chief executive were less arduous, it was not especially difficult to obtain a personal interview—indeed there was long a tradition that the President should on stated occasions receive and shake hands with all who could produce congressional cards. During the last decade there has been a more or less complete shift of policy. No longer do Presidents torture themselves by shaking hands with long lines of those who want to boast that they have been personally greeted by the highest officer of the United States.[4] Nor is it in this latter day always easy for committees of civic organizations to secure interviews in order to urge their claims. Even politicians now find that the President is often beyond their reach, at least as far as a personal conversation is concerned.

The "Little Presidents" One of the 1937 proposals for ad-

being an essential to political success, are an essential to democracy. The people must know what is in the administrative and the executive as well as the legislative mind.

[3] President Franklin D. Roosevelt held two regular press conferences each week when in Washington and not ill or otherwise engaged—on Tuesdays at 4 P.M. and Fridays at 10:30 A.M. President Truman prefers to wait until there is important news to divulge rather than to set a time arbitrarily each week. President Roosevelt's technique encouraged the question method, while his successor gives clear-cut statements that leave less room for questions.

[4] Hours of handshaking result in severe pain in the case of most human beings. When Presidents were obliged to go through this ordeal, their hands were sometimes more or less incapacitated for several days thereafter.

ministrative reorganization was that half a dozen general assistants should be furnished the chief executive to relieve him of some of his heavy burden. The representatives of the press immediately became fascinated with the news value of the scheme and blared forth to the world that "six little Presidents, with a passion for anonymity" were being contemplated. Despite the defeat of the general reorganization bill in Congress, this feature was authorized in the emasculated bill which finally became law in 1939. It is probable that most citizens do not even know the names of the "little Presidents," for they do not, as a rule, receive a great deal of publicity. Nevertheless, they occupy a very significant position in the machinery which makes it possible for the executive office to function. Perhaps the most important of these assistants serves during the Truman administration as special counsel to the President. One assistant devotes himself to personnel problems, not only in so far as appointive offices are involved, but also to the integration of the Civil Service Commission with the departments which perform the daily work of government. Another has charge of coordinating all government publications and publicity, possibly in order to bring up the standard of readability and interest in reports which once had the reputation of being the dullest possible reading. Another has had the responsibility of serving as go-between for the President and Congress. The assistants serve more or less as liaison agents between the President and the various service departments of the government. They enjoy only what authority is conferred on them by their chief—which seems to be rather extensive as far as routine matters go; they make regular reports to him about what is being done in large sections of the government; and they possibly advise him about what changes should be made to accomplish desired ends. The chief executive has long had the responsibility of overseeing the administrative departments, but the recent overwhelming complexity of the system has made it extremely difficult to keep a firm hand on the helm. The "little Presidents" serve a useful purpose in minimizing the difficulty.[5]

Source of Presidential Authority and Duties A reading of

[5] Sometimes the assistants and secretaries, especially personal secretaries, have great influence and are particularly intimate with their chief. Louis McHenry Howe, secretary to Franklin D. Roosevelt, and Joseph P. Tumulty, secretary to Woodrow Wilson, are supposed to have been close confidantes on whom the Presidents relied very greatly.

the Constitution will convey some idea of what a modern President is expected to do, but it will by no means reveal the details. In other words, the Constitution laid down the general powers which the President might exercise,[6] leaving the details to be worked out subsequently. A great deal of the responsibility which now rests on the shoulders of the chief executive may be traced to laws which

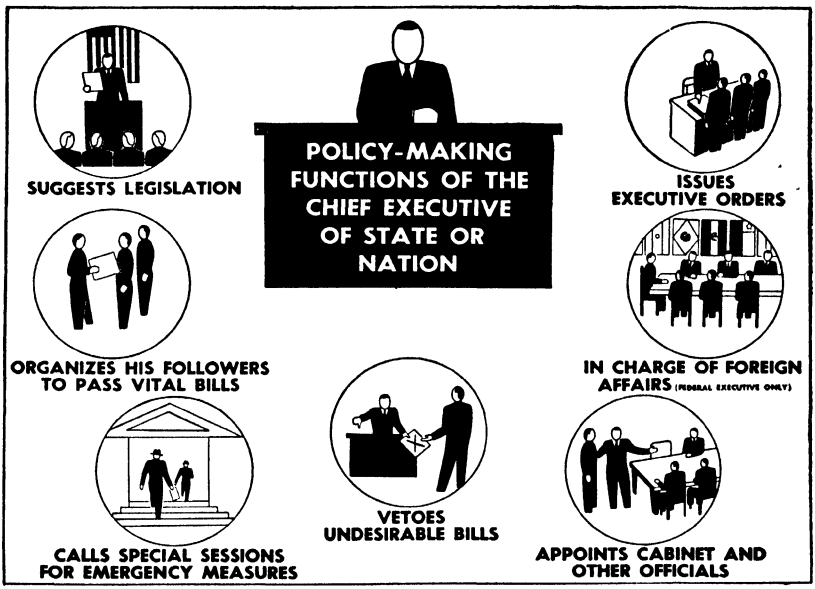


Chart by Graphics Institute, N.Y.C.

Congress has from time to time enacted. Under these the President is authorized to make important appointments, to determine policies which may have far-reaching effect, and to issue orders which for all practical purposes have the force of laws. The Supreme Court has defined presidential powers in a number of its cases by ruling that certain acts of a holder of the office were proper,[7] by declaring other acts without legal foundation and hence invalid,[8] and by re-

[6] Art. II, secs. 2 and 3.

[7] See, for example, the case of *Myers* v. *United States*, 272 U. S. 52 (1926), which upholds the power of the President to remove from office.

[8] See, for example, the case of *Humphrey's Executor (Rathbun)* v. *United States*, 295 U. S. 602 (1935), which limits the removal power in certain cases.

fusing to take jurisdiction on the ground that political questions belonging to the sphere of the President or Congress were presented.[9] Finally, custom and usage have associated certain duties with the office.

Classification of Presidential Powers Before passing to a discussion of some of the specific powers which the President now exercises, it is advisable to attempt a general classification in order that some idea of the powers in their entirety may be gained. Three broad subdivisions may be noted: (1) those chiefly or exclusively executive in character, (2) those arising out of the legislative process, and (3) those which stem from the position of the President as national leader. The first of these categories is so broad that it requires breaking down itself. Among the executive functions may be mentioned the following: (1) supervision over the administrative agencies of the federal government, (2) enforcement of the laws of the United States, including the general maintenance of order, (3) appointment and removal of federal officials, both civil and military, (4) granting of pardons, reprieves, and amnesties, (5) oversight of the conduct of foreign relations, and (6) acting as commander in chief of the armed forces of the United States and as co-ordinator of national defense efforts. Of the three general divisions, two will be examined in this chapter, while the legislative functions will be mainly reserved for a later chapter.

SUPERVISION OVER THE ADMINISTRATIVE AGENCIES

While the tasks of the legislative and the judicial branches of government have, of course, grown heavier during recent years, it is in the administrative field that the greatest elaboration of function has taken place. From a comparatively simple system with a handful of departments and a few hundred employees we have moved to a position where we find ourselves with numerous separate administrative agencies manned by a large array of public employees. It is obvious that such a Gargantuan setup cannot of itself be particularly cohesive and that unless some provision is made for coordinating its efforts there will not only be waste and duplication but distinct inefficiency. The framers of the Constitution did not in their wildest dreams foresee such an administrative system as is now operative in the United States. Indeed so little did they envision a

[9] See, for example, *Luther* v. *Borden*, 7 Howard 1 (1849).

complex administrative machinery of any character that they made little or no direct provision for its structure or supervision. Congress has assumed the power of deciding the structure and extent of the authority of the administrative departments, although at times it has granted to the chief executive limited right to reconstruct and even assign tasks. Under the constitutional stipulation that he shall generally exercise the appointing power, and faithfully execute the laws,[10] under the permission to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices," [11] and under the judicial ruling that he shall be permitted to exercise the removal power except in a few duly specified cases,[12] the President has claimed the right to supervise administration.

Actual Exercise of Supervision Although it has long been agreed that the chief executive should supervise the administrative agencies, his actual exercise of that duty has not been outstandingly vigorous. Presidents even before the present generation have been busy men with all sorts of demands on their time and energy. Any far-reaching supervision of federal administration requires much more than merely a passive desire on the part of a President to coordinate. Moreover, it necessitates some integrated system of organization and at least certain machinery within the executive office itself. Presidents have ordinarily had neither the time nor the active desire to supervise the conduct of administrative affairs in more than a general fashion. Occasionally a well-publicized incident has demanded that they assert their authority, and they have made a great to-do about settling the difficulty. Even in the case of the nine great departments which are reasonably well integrated with the executive office through their heads, the President has not always found it easy to demand adherence to certain standards and policies. If it is difficult to bring the regular departments into line, it is a much more Herculean task to achieve any large measure of control over the independent establishments which litter the national capital.

Recent Efforts to Achieve Central Control The reorganization bill which the President sent to Congress in 1938 was aimed

[10] See Art. II, sec. 2.
[11] Art. II, sec. 2.
[12] See *Myers* v. *United States*, 272 U. S. 52 (1926); and *Humphrey's Executor (Rathbun)* v. *United States*, 295 U. S. 602 (1935).

at bringing the administrative setup into a more integrated relationship with the executive office.[13] At an earlier date President Hoover had sought a similar change. The attempts of both Presidents were effectively defeated, however, by a combination of the efforts of the entrenched forces of bureaucracy to remain without control, the reluctance of Congress to augment the power of the President, and the clamor of demagogues to seduce the people with the idea that reorganization would mean the abandonment of democratic government. The independent establishments continued to be independent and were blessed in their policies which frequently were at cross-purposes and which sometimes ignored essentials of the best interests of the public. Nevertheless, something was saved from the debacle. The "little Presidents" already noted were authorized and have served a very useful purpose in bringing about a reasonable measure of co-ordination when backed by a vigorous chief executive. The transfer of some of the bureaus to more logical departments and the combination of those of similar function has also been helpful. In 1945 President Truman received authority permitting the executive to cope with this problem as complicated by the war program.

Executive Orders The broad structure and powers of administrative departments are outlined in congressional enactments, but there are numerous details which can scarcely be provided for by law. Even if Congress saw fit to spend the time necessary to specify every minute subdivision and regulation it is probable that there would be lacunae which only time and experience would indicate. It has increasingly been the practice to leave the details of organization and operation to be filled in by executive orders. These are ordinarily prepared by experts in the department concerned, submitted to the administrative head, and promulgated either by him or by the President. Thus it is apparent that executive orders originate for the most part in and embody the ideas of staff members of the administrative agencies. Nevertheless, if they are promulgated in the name of the President there is a certain measure of responsibility incident thereto. Moreover, the President may be sufficiently interested and informed to submit the proposed executive orders to his advisers who will recommend changes to be incorporated before the orders are actually put into force. With as adequate a staff as a President now has, the initiative in certain cases may even

[13] This bill is discussed in more detail in Chap. 21.

be taken by the executive office itself rather than by an agency. Although President Hoover had made more use of this device than his predecessors, it remained for Franklin D. Roosevelt to break all records.[14] Within a very short time after his inauguration he had prevailed upon Congress to delegate large powers to him and thus started an era of executive orders [15] in place of laws. That is not to say that Congress has ceased passing laws, for a considerable number of important acts still find their way onto the statute books.

ENFORCEMENT OF THE LAWS

The Constitution commands the chief executive to "take care that the laws be faithfully executed," [16] and, as if fearing that a mere command, however plainly stated, would not suffice, it also prescribes that he swear when taking office that he will "protect and defend the Constitution of the United States," [17] which lays down the order. On the basis of such emphasis it might be supposed that the President has a very active part in law enforcement. Actually this particular duty occasions a President some worry at times, but it does not occupy any major portion of his attention. The responsibility for enforcing the laws of the United States rests primarily upon the Department of Justice, the federal district attorneys, the United States marshals, and the federal courts. If the President is informed that a federal official is intentionally violating a law, especially if moral turpitude is involved, removal proceedings may be instituted. If disregard for law is flagrant, public attention may generate unpleasant heat which in turn may lead the President to reprimand the Department of Justice or to ask for the resignation of a federal district attorney or marshal.

[14] Senator Henrik Shipstead figured that President Roosevelt had issued 3,703 executive orders prior to 1944. During this same period 4,553 laws were passed by Congress.

[15] In 1936 the realization of the need for a publication and record of executive and administrative orders led to the establishment of the *Federal Register*. It is a daily compilation of presidential proclamations such as of Thanksgiving Day or of a national emergency; executive orders, proclamations, notices of hearings, and rules issued by administrative departments or agencies; and orders and decisions of departments or quasi-judicial agencies. Also, like the *Congressional Record*, the *Statutes-at-Large*, and the *United States Reports* in the other two branches of government, the *Federal Register* provides a permanent record of executive activity.

[16] Art. II, sec. 3.

[17] Art. II, sec. 1.

Maintenance of Order In dealing with the responsibilities which the national government owes to the states,[18] we pointed out that internal disorders are to be the occasion of federal intervention if the states desire that assistance. These requests are lodged with the President either by a state legislature or by the state governor if the legislature is not in session. It is then obligatory on the chief executive to send in federal military or police forces, although there is no way to compel him to act unless he sees fit. Presidents actually do heed these pleas for aid and may even find an excuse to intervene when a state refuses to ask for help.[19]

THE POWER OF APPOINTMENT AND REMOVAL

Scope The Constitution states that the President "by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of the departments." [20] It is evident from this clause that the power to appoint is at least nominally quite extensive, although it is qualified by the stipulation that major appointments must receive the approval of the Senate and minor positions may be removed from the presidential area altogether. The Constitution has little to say about the removal power, beyond specifying that judges shall hold office during their good behavior, but the courts have held that the removal power is implied in the appointment grant and in the broad grant of executive power to

[18] See Chap. 5.

[19] Examples of such intervention are not common, but they have sometimes been widely publicized. Sending in troops by President Cleveland, over the protest of Governor John P. Altgeld, in order to protect the mails during the Pullman strike in Illinois was big news. Much public interest was also aroused by sending federal troops to take over the plant of the North American Airplane Corporation in 1941 when strikers refused to heed the repeated appeals of the President. See Allan Nevins, *Grover Cleveland; A Study in Courage*, Dodd, Mead & Company, New York, 1932; W. R. Browne, *Altgeld of Illinois,* The Viking Press, New York, 1924; and for the President's own interpretation, Grover Cleveland, *Government in the Chicago Strike of 1894,* Princeton University Press, Princeton, 1913. Cleveland's action was completely upheld in *In re Debs,* 158 U. S. 564 (1895).

[20] Art. II, sec. 2.

the President and that consequently the President has very wide leeway in that field.[21]

A Classification of Federal Positions Federal appointments have traditionally been listed under two categories: (1) major positions which require the consent of the Senate, and (2) "inferior" jobs which are now for the most part filled under the rules and regulations of the merit system. Actually some of the so-called "major" places are in reality distinctly less important than certain of the "inferior" jobs, at least on any basis more substantial than political activity. For example, the collectors of internal revenue, the federal marshals, and the first-, second-, and third-class postmasters all fall under the first category, although their work is for the most part routine. On the other hand, the principal permanent administrative officers in Washington, the bureau chiefs, and the technicians are for the most part placed under the second class, despite the fact that their responsibilities are far greater and even their compensation exceeds that of many members of the former category. But, no matter how lacking this breakdown may be, it is important in assessing the appointing power of the President. The approximately fifteen thousand holders of the so-called "major" positions in the civil departments as well as the several times that number of army and naval officers all look to the chief executive and the Senate for their appointments. The large number of remaining civil employees in about eight cases out of ten fall under the merit system, while the rest are chosen by the departments or the courts under personnel practices which they ordain.

Actual Exercise of the Appointing Power During earlier periods of our national existence Presidents have found the use of the appointing power to be a great drain on their time and energy. Numerous office seekers have attempted to see the President in person to plead for consideration. The number of positions has rarely, if ever, been anything like large enough to satisfy all the demands, with the result that many applicants have been disappointed. When one of these sought revenge by assassinating President Garfield, the attention of the country was focused on the evils attendant upon the system and led to the creation of a Civil Service Commission charged with preparing lists of those properly qualified for various public positions. Although politicians have never viewed

[21] See *Myers* v. *United States*, 272 U. S. 52 (1926).

the merit plan with any particular enthusiasm, they have deemed it prudent to yield to various pressures and little by little have transferred public employment to a career basis. Something like 20 per cent of the civil positions still remain outside of the jurisdiction of the Civil Service Commission and may be used to reward faithful members of the majority party. The rank and file of these places are filled by the departments and commissions themselves, but the President keeps at least a slight measure of control through his assistant who co-ordinates the problems of government personnel.

Frequency of Personal Appointments It is sometimes assumed that the fifteen thousand or so places that require presidential nomination and senatorial confirmation still are personally handled by the chief executive himself. As a matter of fact, very few of these appointments are in any sense personal ones. The several thousand postmasterships are filled by the Senators and Representatives of the majority party after the Civil Service Commission has given a simple examination. The numerous collectors of customs, collectors of internal revenue, federal district attorneys, and United States marshals are so far removed from the presidential path that they receive only cursory attention from the chief executive himself. Senators belonging to his party decide among the various claimants in their state; and, if their decisions are not so unsatisfactory that the Justice and the Treasury departments interpose a violent objection, their choices are then appointed. The judgeships in the federal courts may or may not be disposed of in the same fashion—most of the district judgeships have apparently gone recently to the favorites of prominent Democratic politicians. Ambassadors and ministers, too, are often actually appointed not by the President but by some powerful politician, despite the fact that the former must send in the formal nomination to the Senate. Secretaries of the nine ranking departments are likely to be the personal choices of the President after he has given due consideration to the recommendations of political associates, while other high administrative posts may or may not receive much attention.

Role of the Senators "Senatorial courtesy" supposedly stipulates that the chief executive shall consult Senators of his own party before sending in nominations for officials in their respective states. Actually, as former Senator Pepper of Pennsylvania has

pointed out,[22] the role of the Senators is far more prominent than a statement of this custom would indicate on its face. Ordinarily the Senators do not wait to be consulted—they keep their eyes on possible vacancies and then proceed to send letters or messages to the President[23] requesting that certain of their followers be nominated to the positions. The President may attempt to investigate the qualifications of these persons, but in many instances he is too busy to do more than act as a "rubber stamp." Of course, the Senators of a state may disagree as to who should be the next district judge or collector of internal revenue, or there may be no Senator from the President's party in office. In these cases the President may wait until the Senators immediately concerned have reached an agreement[24] or he may decide to accept the recommendations of other persons, particularly party leaders in the state. In general, except in the case of a small number of outstanding positions, the appointing power of the President seems to have become rather routine.[25] The very fact that he has to make the nomination in the last analysis confers on his person much political influence, but as far as the appointments themselves are concerned the presidential role is primarily that of an intermediary.

[22] See George Wharton Pepper, *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930.

[23] Letters are not as frequently used as in the past. The liaison representative whom the President maintains in Congress talks to Senators and Representatives about their desires and carries messages to the executive office pertaining to appointments that require attention. Of course this applies only to members of the President's own party, particularly to those who follow presidential desires.

[24] At times a President may wait two or three years. Two vacancies on the Circuit Court of Appeals at Chicago remained unfilled for well over a year because of disagreement among politicians at a time when the President was castigating the courts for being behind in their work.

[25] Professor E. S. Corwin in *The President: Office and Powers*, New York University Press, New York, 1940, p. 290, argues that, since the President's major control of Congress stems from his position as popular leader, the loss of the patronage power would possibly work to his advantage rather than disadvantage. To destroy federal patronage would tend to turn the parties into "organs of opinion pure and simple, to the great advantage of the President as Party Leader." He quotes President Taft's famous epigram that by every appointment he made "nine enemies and one ingrate," and he concludes that "the anxiety of certain authorities to discover some mode of 'compensating' the President for the loss of patronage which a professional civil service would mean is misconceived." He adds in a footnote, however: "It is possible that I am a bit overconfident in my position."

The Removal Power Federal judges are specifically exempted from the removal power of the President, even in those instances in which they have clearly demonstrated their incompetence in the position. Only one method, that of impeachment, is set forth by the Constitution to relieve the commonwealth of these burdens. In the case of the other holders of federal positions no formal provision beyond the cumbersome impeachment process is made for removal and for almost a century and a half the question remained unsettled as to exactly what authority the President had. In general, it was the consensus of opinion that removals at times had to be made and that the President was the logical person to act.[26] Nevertheless, in 1867 Congress passed a law which specifically laid down the rule that removal from civil offices which had required the original confirmation of the Senate could be effected by the President only with the Senate's consent.

Myers and Humphrey Cases It was not until 1926 that the Supreme Court finally carefully examined the authority of the chief executive relating to removals and declared that it transcended the appointing power in that the consent of the Senate was not necessary.[27] But even this sweeping decision did not put an end to the controversy, although it did go far in that direction. In setting up certain offices Congress specified that the President could remove incumbents for incompetence or misconduct but left removal on the basis of political reasons uncertain. In deciding the Humphrey case in 1935 the Supreme Court modified the earlier Myers decision by ruling that Congress has the authority to exempt certain offices which it feels are quasi-judicial or quasi-legislative in character from the full removal power of the President.[28]

Actual Exercise of the Removal Power The fact that most of the federal employees are at present under the merit system and receive their appointments from others than the President makes

[26] As early as 1789 congressional opinion pointed in the direction of vesting such a power in the President. From time to time the question was debated and the bulk of the arguments favored presidential exercise of the removal power.

[27] See *Myers* v. *United States*, 272 U. S. 52 (1926). Justices McReynolds, Brandeis, and Holmes did not agree with the majority of the court. It is interesting to note that the majority opinion overthrowing the old statute and allocating full power of removal to the President's hands was written by the former President, Chief Justice Taft.

[28] See *Humphrey's Executor* (*Rathbun*) v. *United States*, 295 U. S. 602 (1935).

them not subject to the general removal power of the chief executive, although definite machinery is provided for their separation from public jobs "for the good of the service." Numerous other officials [29] hold their positions for definite terms, usually for four years, and this also relieves the President of a considerable burden. If they continued indefinitely in federal employment, political pressure or lack of attainments would necessitate removal. As it is, even politicians can await the expiration of a comparatively short term, while the public can endure mediocre services. Hence it is only where no definite term is set up or in extreme cases of incompetence or corruption that the President makes use of this removal power. Ordinarily a mere request for a resignation will suffice in these instances, but if the incumbent displays stubbornness, the President has only to order removal, even to forcible dispossession by a federal marshal.

PARDONS, REPRIEVES, AND AMNESTIES

The framers followed the time-honored tradition of conferring the pardon power on the executive—the Constitution succinctly states that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." [30] It has been held that this authority is very wide, except, of course, in so far as impeachment proceedings are involved. If he chooses,[31] a chief executive can pardon an offense before the guilty person has been arrested, or he may free him from jail while he waits trial. Even after a trial has started, the President has the legal right to stop the proceedings by extending a pardon. After sentence has been pronounced, the accused may be pardoned immediately or during the period that he is serving a prison sentence. Finally, the legal guilt and blot of a prison record can be expunged at least in part by the issuing of a pardon after a convicted person has finished his prison term.[32] A reprieve may be

[29] Federal attorneys, marshals, collectors of internal revenue, and so forth.

[30] Art. II, sec. 2

[31] Of course, the President rarely if ever *chooses* to do this.

[32] In *Ex parte Garland,* 4 Wallace 333 (1867), the Supreme Court held that "if granted after conviction, it removes the penalties and disabilities, and restores him all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." However, in *Carlesi* v. *New York,* 233 U. S. 251 (1914), the court modified that statement in one particular.

granted which will delay the execution of a sentence. Or the President may decide to *commute* a sentence, substituting life imprisonment for the death penalty or reducing a prison sentence from twenty to ten years. In case of a civil war or general rebellion, the pardon power permits the President to grant an amnesty to the participants in so far as that seems wise after the hostilities have ceased.

Actual Exercise of the Pardon Power Although the governors of some of the states actively exercise the pardon power which is conferred on them, the President finds it prudent to delegate his responsibility to a large extent to the Department of Justice. He has so many other matters to engage his attention that it is deemed best to charge the Department of Justice with receiving applications, investigating claims, and drafting recommendations. Personal pleas from relatives served as a great drain on the time and particularly the emotions of some of the earlier Presidents, notably Abraham Lincoln. The current practice of delegating the actual administration of the preliminaries to the Department of Justice seems very wise. After the Department of Justice has gone over the application, considered the evidence presented, communicated with the trial judge and prosecutor, and made up its mind as to what should be done, the President has only to go through the routine task of following its recommendation.[33]

Carlesi had been convicted and pardoned of a federal offense. When he was tried on another offense in New York courts, evidence was produced to the effect that he was a habitual criminal on the basis of the federal conviction. On appeal his attorneys argued that his pardon had, as was said in an earlier case, "blotted out the existence of guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense" and that hence the fact of his previous conviction could not be used as evidence against him. The Supreme Court rejected the argument. Therefore, one cannot say that a pardon absolutely "blots out the fact of guilt," even though it does restore civil rights.

In the case of Eugene V. Debs, however, President Harding is said to have taken a direct and personal interest. Debs and many other pacifists had been sent to the Atlanta penitentiary during World War I. After the war most of them were pardoned rather soon by President Wilson. Since Debs had been a particularly outstanding antiwar leader and since Wilson felt so strongly against him, he was not pardoned with the rest. Great public pressure was brought for his release and Mr. Harding personally took steps to arrange his pardon.

FOREIGN RELATIONS

The exact role of the chief executive in foreign relations depends in large measure upon the background and interests of the particular incumbent. Several of the Presidents have been deeply interested and comparatively well informed in the fields of world affairs, diplomacy, and international law. It is not strange that these men should keep a constant eye on the foreign scene, that they should confer frequently with the Secretary of State on the foreign relations of the United States, and that they should even on occasion prepare notes to foreign powers, draft tentative treaties, and otherwise take a direct hand in the conduct of our foreign relations.[34] However, most of the Presidents have come from backgrounds which have emphasized internal rather than external affairs, and consequently they are not primarily concerned with what is going on in the rest of the world, nor are they competent to handle the details. Nevertheless, in these days of numerous far-reaching world problems any President must give considerable personal attention to foreign affairs, even to the extent of attending conferences with heads of other states.

Actual Conduct of the Foreign Relations The Department of State and its representatives abroad actually carry most of the responsibility for managing the relations of the United States with foreign countries. These activities are dealt with in some detail in a later chapter[35] and hence it is not necessary to consider them here. Nevertheless, it is advisable at this time to note the duties of the President in this connection. It has already been pointed out that he is charged with the responsibility of appointing the ambassadors and ministers of the United States. In some instances he accepts the recommendations of political leaders; in other cases he decides to elevate officers of the foreign service;[36] and again he nominates men in whom he has personal confidence. Whether he

[34] Woodrow Wilson is the best example of a recent President who has taken a direct hand in this field. He apparently prepared virtually every important note sent to a foreign government. Franklin D. Roosevelt, especially in later years, took an active interest in this field.

[35] See Chap. 27.

[36] During recent years half or more of the ambassadors and ministers have been drawn from the career ranks.

has any real interest in foreign affairs or not, the President must personally receive and welcome the ambassadors and ministers of foreign governments not only when they arrive and present credentials but at state functions.[37] If important treaties are to be negotiated, the President must decide, either on his own initiative or upon the advice of the State Department, who the representatives of the United States shall be to the conference which handles such tasks.[38] Except in rare instances, a chief executive feels it an obligation to keep generally informed of what is transpiring in the world and consequently confers regularly with the Secretary of State. Finally, a President may use his personal influence to encourage cordial relations with other countries. Personal visits, such as those paid to Latin America by President-elect Hoover and President Franklin D. Roosevelt, may do much to improve international understanding and good will. Special messages, interviews, and radio speeches may also be used for this purpose.

Recognition of Foreign Governments When the President receives ambassadors and ministers of foreign governments accredited to the United States, he actually does more than bestow personal courtesy or follow official etiquette. Diplomatic usage has long ordained that the reception of such foreign agents constitutes official recognition of the government which they represent. Consequently the President, usually acting upon the advice of the State Department, determines whether or not the United States will recognize a new foreign government and indicates that decision by receiving ambassadors or ministers from that government and designating American diplomatic officials to represent the United States in the country involved. The problem of recognition has recently proved a distinctly thorny one, especially in the case of the new Balkan governments. The United States has been reluctant to accord full recognition to governments which do not incorporate certain democratic principles; on the other hand, pressure to maintain official relations with these governments has been great. In 1946 a somewhat novel doctrine was enunciated to the effect that the United States would receive diplomatic agents from and carry on negotiations with certain governments but that this would not necessarily imply full recognition of those governments.

[37] It is the custom to give an annual diplomatic dinner at the White House.
[38] President Wilson, of course, went himself to Paris.

Executive Agreements The United States has traditionally negotiated important agreements with other governments in the form of treaties which require the ratification of the Senate. However, during recent years a good many international understandings have been arrived at through executive agreements, which are made under the authority of the President without recourse to the Senate. Until comparatively recently most of these executive agreements covered routine matters such as international postal service. At present two other types of executive agreements may be noted. Congress has authorized the President to enter into reciprocal trade agreements with other governments under the basic provisions laid down in congressional statutes. It may be added that many of these have been quite important, indeed more far-reaching in effect than many formal treaties. The second type of executive agreement has no authorization from Congress and covers matters which can only with difficulty if at all be distinguished from formal treaties. This type is resorted to because the Senate seems unlikely to muster the necessary two-thirds majority specified for ratifying a treaty. There is grave doubt whether there is any adequate constitutional basis for such action on the part of the President, but under great stress a President may be tempted to resort to such a backdoor method if it seems impossible to handle the matter by a treaty.

MILITARY AFFAIRS

The Constitution designates the chief executive as commander in chief of the armed forces [39] and hence places grave responsibilities on his shoulders for the national defense. As in the case of international relations, some holders of the office are prepared to take an active part in directing the use of the armed forces, but the average President does not have the technical background to perform the immediate tasks associated with these forces.[40] In nominating officers to the Senate, he ordinarily follows the recommendations of the service departments, although occasionally political considerations seem to enter in. The war plans call for expert

[39] Art. II, sec. 2.

[40] Presidents Washington, Grant, and Theodore Roosevelt among others had commanded forces in actual warfare. President Franklin D. Roosevelt served as Assistant Secretary of the Navy during a part of the Wilson administrations.

tactical knowledge and hence the executive delegates these to the general staffs of the Army, the Navy and the Air Force. The President does ordinarily concern himself with the general policy to be followed and often recommends appropriate legislation to Congress.[41] He, of course, reviews the Army, the Navy, and the Air Force, confers regularly with the Secretary for National Defense, and approves rules and orders which are prepared for his signature by experts in the service departments.

In Wartime During a period in which the United States is engaged in war the role of the President in the field of military affairs becomes especially important. Powers which are inherent in his office come into greater use, while Congress invariably confers on him special authority to meet problems arising out of the defense of the nation. President Franklin D. Roosevelt expended large amounts of energy in mobilizing public sentiment, co-ordinating defense efforts, and conferring both with his own military leaders and representatives of the United Nations. Within a few days of the attack on Pearl Harbor Congress approved a law which conferred emergency powers of far-reaching character on the chief executive, duplicating in large measure the War Powers Act of 1917. Then in 1942 a second War Powers Act was drafted by Congress to supplement the earlier statute; together these had the effect of giving the President the greatest power ever granted a chief executive of the United States in the national defense domain.

THE PRESIDENT AS NATIONAL LEADER

The Place of a Leader in American Psychology. With memories fresh of Fuehrers, it is not too flattering to attribute a fondness for leadership to ourselves. Nevertheless, one cannot fairly ignore the fact that over a period of years we have established a reputation for such a tendency, although it may be hoped that we exhibit greater taste in our selection and that we display more mature judgment in deciding how far to follow his dictates than seems to be the case with the Germans, the Italians, and certain other folk. Our yearning for a leader has fortunately never as yet led us to the blind worship which dictators receive. Even after

[41] See, for example, the series of recommendations which Franklin D. Roosevelt made during 1940-1941 and particularly after the declaration of war against Japan, Germany, and Italy.

we had enthusiastically embraced a colorful and able Franklin D. Roosevelt, we had the restraint to refuse to accept some of his bolder notions.[42] Moreover, despite the acclaim which a popular President receives, we have rarely, if ever, had the unanimity of opinion toward a single leader that implies a complete stampede. Thus while Theodore Roosevelt, Woodrow Wilson, and Franklin D. Roosevelt have had loyal and devoted admirers, they have had as well bitter critics who charged them with all manner of evil. Nevertheless, we the American people do prefer men to issues and conduct ourselves at the polls accordingly. Indeed as long as the two major parties put up colorful candidates, we do not seem to care very much whether they take a stand on public questions or not. Presidents are identified with the political parties which they represent, but we go farther than that and tend to use them as a symbol of the entire federal system of government. That is not to say that we assign them the place which the English bestow upon their king, for we expect more active leadership than they do. Moreover, not every citizen goes so far as to associate the name of the incumbent President with the United States itself, although that appears to be the psychology of large numbers of citizens.

Practical Results of the Concept of Presidential Leadership

Inasmuch as the rank and file of people identify the President with the federal government, and even with the American way of life, they naturally look to him for guidance in all sorts of matters. Congress is far too large and colorless a body to entrance a populace. The courts are associated with the suppression of crime and the litigation of corporations rather than with the main trunk line of government. The administrative agencies stand only vaguely on the outer circle of the limelight and represent the popularly disliked red tape and the bureaucratic practices. But the President is the friend of the people; his actions, even his foibles, are known to everyone; it is he who labors to make the United States a better place in which to live. The most outstanding Presidents have recognized this extralegal position which they hold and have attempted to fill it as competently as possible.

Not every President could capitalize on the leadership inherent in his office to the extent that Franklin D. Roosevelt did. In the first place, few holders of that exalted office have the personal

[42] For example, the proposal to reorganize the Supreme Court.

talents which make possible what Mr. Roosevelt achieved. Moreover, the spirit of the time has a great deal to do with it. Even a Franklin D. Roosevelt would probably have grown discouraged at the apathy which characterized the 1920's. But let a terrific economic breakdown grip the nation, let the safety of the country be threatened by external foes and the people in their fear and confusion turn to a leader who speaks to them "as one having authority." No other person is so well placed to do this as the President of the United States.

Selected Bibliography

Berdahl, C. A., *The War Powers of the Executive in the United States*, University of Illinois Press, Urbana, 1921.

Binkley, W. E., *The Powers of the President*, Doubleday, Doran & Company, New York, 1937.

Comer, J. P., *Legislative Functions of National Administrative Authorities*, Columbia University Press, New York, 1927.

Corwin, E. S., *The President's Removal Power under the Constitution*, National Municipal League, New York, 1927.

—, *The President's Control of Foreign Relations*, Princeton University Press, Princeton, 1917.

—, *The President: Office and Powers*, New York University Press, New York, 1940.

Hart, James, *The Ordinance-Making Powers of the President of the United States*, The Johns Hopkins Press, Baltimore, 1925.

Hill, J. P., *The Federal Executive*, Houghton Mifflin Company, Boston, 1916.

Humbert, W. H., *The Pardoning Power of the President*, American Council on Public Affairs, Washington, 1941.

Koenig, L. W., *The Presidency and the Crisis*, King's Crown Press, New York, 1944.

Laski, H. J., *The American Presidency*, Harper & Brothers, New York, 1940.

Milton, G. F., *The Use of Presidential Power 1789-1943*, Little, Brown & Company, Boston, 1944.

Morganston, C. E., *The Appointing and Removal Power of the President of the United States, Senate Document 172*, Seventieth Congress, second session, Government Printing Office, Washington, 1929.

Odell, T., *War Powers of the President,* Washington Service Bureau, Washington, 1942.

Pollard, James E., *The Presidents and the Press,* The Macmillan Company, New York, 1947.

Roosevelt, F. D., *On Our Way,* The John Day Company, New York, 1934.

Rosten, Leo, *The Washington Correspondents,* Harcourt, Brace & Company, New York, 1937.

Smith, A. Merriman, *Thank You, Mr. President,* Harper & Brothers, New York, 1946.

—, *A President Is Many Men,* Harper & Brothers, New York, 1948.

Taft, W. H., *Our Chief Magistrate and His Powers,* Columbia University Press, New York, 1916.

White, Howard, *Executive Influence in Determining Military Policy in the United States,* University of Illinois Press, Urbana, 1925.

Wilson, Woodrow, *The President of the United States,* Harper & Brothers, New York, 1916.

14 · *The President and His Cabinet*

The Constitution has nothing to say about a presidential cabinet, although it does mention "principal officers" and "executive departments." [1] Considering the fact that it was the custom for executives to have official advisers long before the framers met in Philadelphia in 1787, it may seem strange that no provision was included which would necessitate a cabinet. One cannot doubt that the delegates had in mind the importance of counsel in determining policies, for their debates mention a council of appointment, a council of revision, a general advisory council, and so forth. But they apparently deemed it unnecessary to insert any formal provision,[2] taking it for granted that the President would have sufficient sense to avail himself of advice upon important occasions.

Beginnings of the Cabinet Shortly after taking office President Washington found it necessary to talk over certain questions with the principal officers of government. By 1791 he had come to the point where he called regular conferences of key officials for the consideration of difficult problems; the label "cabinet" seems to have been first applied to these group meetings in the year 1793. The informal practice was more or less solidified by the treatment which the President was accorded by the two other branches of government. To start out, Washington seems to have expected that the Senate would serve substantially the same purpose that upper houses in the colonial legislatures filled; that is, it would be an advisory council with as much executive as legislative responsibility. The Constitution more or less implied that this might be the case when it specified the "advice and consent" [3] of the

[1] Art. II, sec. 2.
[2] They did, of course, give to the Senate a measure of such authority in connection with appointments and treaty-making.
[3] Art. II, sec. 2.

Senate in making appointments and treaties; but, when President Washington sought such assistance in connection with Indian affairs, he was snubbed. Relying on the precedent of English and colonial courts, the President even asked the Supreme Court to render opinions of an advisory nature, but here again he was rebuffed. After such experiences he proceeded to set up an informal group of advisors, despite the criticism occasionally aimed at the "cabinet conclave" which the militant ex-revolutionists thought might take on too much authority.[4]

From Washington to Roosevelt By the end of Washington's two terms the cabinet was definitely a feature of the government, although it lacked any basis more substantial than custom. President Adams might easily enough have shelved the tradition, but he did not choose to do so. It was not until Andrew Jackson appeared on the scene that the chief executive made any emphatic objection to an agency for giving advice. Early in his administration Jackson dispensed with cabinet meetings altogether,[5] though he subsequently resumed the practice of holding them. His successors followed the custom of calling the heads of the principal departments into an informal conference for the discussion of complicated public problems. They became progressively more reliant on the cabinet, until in Buchanan's administration four or five members practically took over the entire presidential responsibility. Lincoln found certain members of his cabinet irritating and did not rely on them greatly, while Grant more or less openly ignored his advisers.

After another series of Presidents who depended rather heavily upon their cabinets, Woodrow Wilson was independent enough to prefer his own resources or the counsel of a very few personal agents such as Colonel Edward M. House. But Wilson's successor Harding perhaps brought the cabinet into record prominence, inviting the Vice-President to attend its sessions and including in its membership men who knew a great deal more about public affairs than did he himself.

The Franklin D. Roosevelt and Truman Administrations

[4] The early development of the cabinet is carefully traced in H. B. Learned, *The President's Cabinet*, Yale University Press, New Haven, 1912.

[5] He did, however, have several intimate friends who acted as advisers in place of the cabinet. These, among them Amos Kendall and Francis Blair, were popularly dubbed the "Kitchen Cabinet."

Few Presidents have experimented with the gadgets of government as much as Franklin D. Roosevelt. This flair for novelty is clearly portrayed by his measures relating to the cabinet. To begin with, Mr. Roosevelt picked a formal cabinet, which included a striking array of the weak and the strong, the amateur and the man of experience. It soon was apparent that the President was not leaning very heavily on his regular cabinet, although meetings were not dispensed with. But Mr. Roosevelt found it more agreeable to look for real advice to a little group of younger, more daring men, known as the "brain trust." The well-known New Deal was fashioned by them rather than by the more conservative and mature members of the formal cabinet. Power went to the heads of some of the brain trusters; the newspapers subjected them to a barrage of ridicule and castigation; and their personal relations with Mr. Roosevelt grew less intimate.

For a time Mr. Roosevelt tried a "supercabinet," the National Emergency Council, which included in its membership more than thirty persons drawn from the cabinet and the independent establishments. This body shared the stage with the regular cabinet, gave seats to the heads of the ten ranking departments as well as to chairmen of the newer agencies, and held meetings once each week. There were those who predicted that this large advisory body would eventually entirely supplant the older cabinet; they maintained that the ten secretaries of the traditional departments were too few in number and too limited in point of view to render adequate assistance as an advisory body to the chief executive. It is not quite clear what finally led to a return to the older system. Perhaps the very size of the supercabinet militated against its success. Doubtless the prima donnas who represented some of the New Deal agencies had to exhibit their personal brilliance and ideologies to such an extent that the advisory function was eclipsed. Both Presidents Roosevelt and Truman leaned heavily upon advisers who were personal friends, such as Harry Hopkins and George Allen.

Results of a Century and a Half of Cabinet Development

After a century and a half the cabinet continues to be an important part of American government. With national and international problems more complex than at any previous period, the President's need for sage counsel is greater than ever before. But it must be

stressed that the cabinet remains what it started out as: an advisory body.[6] It has no province beyond that assigned by the particular incumbent of the presidency; no votes are taken and no course of action adopted. The meetings consider only those matters which he presents to it and carry the discussion only as far as he desires. Its opinions may be accorded substantial respect; they may be followed in part; or they may be disregarded entirely.

THE CABINET TODAY

Membership For more than three decades prior to 1947 the cabinet included in its membership the secretaries of the ten departments of State, Treasury, War, Navy, Justice, Post Office, Agriculture, Interior, Commerce, and Labor. The unification of the service departments in 1947 dropped the heads of the War and Navy departments from the cabinet and added the secretary of National Defense. It was proposed by the committee on administrative management in 1936 that two additional departments be set up which would rank with these "big ten." After the exciting battle culminating in presidential defeat, the bill which would have authorized this enlargement was, of course, dropped. Nevertheless, in 1939 the President saw fit to create three mammoth agencies—the Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency—intended to collect under single jurisdictions, first all the welfare activities of the federal government, second the public works program, and finally the credit facilities. In February, 1942, a National Housing Agency was created to co-ordinate the varied activities in this field. These establishments are more sizable than certain of the older departments and exercise extremely important powers, but they are not adjudged to be on quite the same plane as the latter. Their heads participate in cabinet meetings,[7] though they may lack the full membership that goes with the traditional secretaryships. At times

[6] On this point, see H. B. Learned, *op. cit.*, especially Chaps. 4-12.

[7] There is a difference of opinion as to whether these administrators are members of the cabinet. They receive less salary than the traditional secretaries and of course do not have the same seniority. However, the debate seems academic, since the President determines the membership of his cabinet and listens to those who attend as he pleases. The Federal Loan Agency was dissolved during the Truman administration. A Housing and Home Finance Agency took the place of the National Housing Agency in 1947.

the Vice-President has been accorded a seat at the foot of the cabinet table, although there has been some question as to whether he is a member or not. Inasmuch as there are no formal rules regulating cabinet membership, it is up to each President to determine what status the Vice-President shall have—at least in so far as the Vice-President is willing to participate at all.[8]

Choice of Cabinet Members It has long been the tradition that a President shall enjoy almost complete freedom in naming the members of his cabinet. The Senate has to confirm his choices to these posts, but except in rare instances[9] it has given its approval as a matter of course. The argument runs that the chief executive has to work with the members of his cabinet and therefore should be permitted to choose those persons with whom he thinks he can co-operate best. Nevertheless, it should not be supposed that a chief executive is actually unrestricted in his selection of these officers and that he designates only those whom he personally likes. Politics, geography, experience, and various other factors must be heeded to a very considerable extent.

Membership in the Cabinet and Politics Although President Washington included both Thomas Jefferson and Alexander Hamilton in his cabinet, he discovered that two such divergent influences led to difficulties. Since the days of Washington it has been the general practice to limit cabinet choice to the members of the President's own political party. Franklin D. Roosevelt departed from the old tradition to a greater extent than any other chief executive. Ickes and Wallace of his original cabinet certainly came from Republican antecedents and background. Although they supported the candidacy of Mr. Roosevelt, they had at one time been at least fairly active in Republican politics. Mr. Woodin, largely a personal choice, had apparently been Republican in sympathies, although he had not been actively identified with party politics.

[8] Calvin Coolidge sat regularly in the Harding cabinet, while Garner, Wallace, and Truman were faithful in attendance at Roosevelt cabinet meetings. Other Vice-Presidents have attended at times but not regularly. President Truman invited Senator Kenneth McKellar, president *pro tempore* of the Senate, to attend cabinet meetings.

[9] The case of Charles Warren of Michigan nominated by President Coolidge as Attorney General is the only recent case in which approval has been refused. However, the Senate in 1945 refused to confirm H. A. Wallace as Secretary of Commerce until the R.F.C. had been removed from the latter's control.

Then during the closing months of his second term Mr. Roosevelt brought in two men who had been very actively associated with the Republican party and who had not supported his presidential aspirations. Henry Stimson, for many years a leading Republican and Secretary of State in the Hoover administration, took over the secretaryship of War, while Frank Knox, Republican candidate for Vice-President in 1936, was made Secretary of the Navy.[10] In both cases the appointments were explained as dictated by the national emergency arising out of the world situation. President Truman continued Republicans Patterson and Forrestal in the War and Navy secretaryships in the early postwar period and named the latter as the first Secretary of National Defense.

In picking the members of his own political party for cabinet seats, a President often feels that the national chairman should be rewarded with the postmaster-generalship. Party leaders, who have not occupied official positions in the political organization but who have contributed generously to campaign expenses or otherwise rendered effective aid, frequently desire cabinet membership. Not all of these can be recognized because of the small number of posts available, but an attempt is usually made to bring in certain of the most deserving. Although the chief executive and the cabinet members are regularly thrown together and find cordial relations very desirable, it is a common practice for a President to include in his cabinet one or two men who lead those factions of the party which have not been too warm in their support. This is done in order to heal party wounds and as far as possible bring the various elements of the party together into an effective and cohesive unit.

Geographical Representation in the Cabinet The various sections of the country feel that they should be represented in the President's cabinet and exhibit disappointment if they are ignored. There is little doubt that choices have been frequently made on this basis, despite the comparative weakness of the man named and the personal preference of the President for someone else. Occupants of the White House often have their eyes on a second term and realize the importance of placating party organizations throughout the country. Even if this is not the case, the adverse criticism that is generated by leaving out important geographical areas may

[10] James Forrestal, another Republican, was named by Franklin D. Roosevelt to succeed Knox.

be enough to sway the chief executive. Nevertheless, Franklin D. Roosevelt departed from this dictate of custom to a considerable extent by giving the East most of the seats. However, President Truman early rectified this uneven geographical distribution by naming cabinet members from Washington, New Mexico, Texas, and South Carolina, thus sharply reducing the eastern representation.

Other Factors Influencing Selection While the cabinet as a whole has never been selected on the basis of the members' expertness in handling administrative tasks, some attention is often paid that consideration. The Secretary of Commerce more likely than not will be a man who has had considerable experience in business affairs. The Secretary of Agriculture is almost always a man who has been directly or indirectly interested in agriculture. The Attorney General is always a lawyer, although he may have had little to do with public affairs before taking office. There are several instances where secretaries of State and of the Treasury have had at least fairly extensive experience in the fields of world affairs and public finance.[11] It is not strange that cabinet members usually include at least one personal associate of the chief executive. Presidents are human; they not only like to have their friends within call but also delight in conferring honor upon them.

Meetings It is now customary to hold one cabinet meeting each week on Friday afternoon at two o'clock. Of course, this does not imply that, when conditions are normal, meetings are held regularly during holiday-time, the dull months of summer, or when the President is indisposed or absent from Washington. Again it does not mean that the cabinet may not be called into more frequent session if domestic or international affairs are at such an acute stage that immediate decisions must be made. A single meeting may last for only a few minutes or it may go on for hours, depending upon what is under consideration and how long the President wants to prolong the discussion.[12] Instead of using the informal arrangement of some countries, the cabinet of the

[11] Secretaries of State Stimson, Hughes, and Hull may be mentioned. In the Treasury Department Hamilton, Gallatin, McAdoo, Mellon, and Vinson might be cited.

[12] The Truman cabinet meetings vary of course in length, but three quarters of an hour is fairly typical. In contrast, the Roosevelt cabinet meetings ran to about an hour and a half. See the *New York Times*, May 13, 1945.

United States follows a strict seating order which places the secretaries of State and of the Treasury to the immediate right and left of the President. He now sits in the center of an octagonal table, while the secretaries and administrators are placed around the sides according to the seniority of their departments.[13] If the Vice-President attends, he is given the place facing the President.

Order of Business In the English cabinet an agenda is prepared beforehand and circulated among the members. A cabinet secretary or his assistant is always present to keep a record of discussion. However, in the United States there is no formal order of business, although on occasion members may be told beforehand what will be considered. We have no cabinet secretary in the United States and no minutes are regularly kept, but the President may call in his personal secretary to take notes if he thinks it desirable. No votes are taken and recorded; no motions put; and no resolutions are passed. The exact procedure will depend upon the President himself. He may stress formality, dignity, and seriousness; or he may prefer informality and attempt to minimize dullness and pomposity.[14] Newspaper men are, of course, excluded; nor is any formal summary regularly issued for popular consumption, as is the custom in certain countries. Any statement as to what has taken place is given out by the President or by his public-relations secretary. Inasmuch as no formal decisions are made by the cabinet, it is not possible to announce that any definite action was taken.

General Nature of Cabinet Business Although not too much is known about what goes on in the secrecy of cabinet meetings and there is doubtless considerable variation from administration to administration, it is generally understood that two types of business are transacted.[15] In the first place, the broad poli-

[13] Secretaries usually buy their chairs when they leave office and take them home for souvenirs. Hence the chairs are ordinarily quite new in appearance. A new octagonal mahogany table was presented by Jesse Jones for cabinet use in August, 1941. The secretaries, the administrators, and the Vice-President are provided with places around the President, who sits in the center rather than at the end as formerly.

[14] It is reported that Franklin D. Roosevelt sometimes related a story or an amusing incident. Lincoln was apparently fond of stories also.

[15] See W. C. Redfield, *With Congress and Cabinet*, Doubleday, Doran & Company, New York, 1924; and D. F. Houston, *Eight Years with Wilson's Cabinet*, Doubleday, Doran & Company, New York, 1926.

cies of the government are examined, canvassed, and dissected. Matters of detail are discussed by the higher officials within a department or by the President and a department head, but they do not as a rule occupy the time of the cabinet as a body. But the President may frequently consult the cabinet on questions of what attitude the United States shall take on some international situation, of what shall be done to reduce unemployment, of how a world food shortage can be ameliorated, or of what the government can do to control labor disputes. Thus, its chief function is in helping to formulate the policies of the United States on far-reaching public questions. How great its contribution will be in policy-making depends in large measure on the President himself, but no one can doubt its important role over a period of a century and a half.

The second type of business is somewhat more routine. If there is a question about which department is to handle a certain problem, if several departments are in conflict over an issue, if some common approach to the exercise of specific authority shared among several departments seems desirable, then the President may ask the cabinet to attempt co-ordination. Needless to say, in a government as complicated and gigantic as ours, misunderstandings may arise and conflicting policies may be followed. When these are ironed out, important benefits accrue.

Compensation and Perquisites of Cabinet Members Members of the cabinet at present receive annual salaries of $15,000 per year.[16] They are entitled to Packards, Cadillacs, or other expensive automobiles for official use and may collect traveling expenses from the Treasury when they are away from Washington on government business. They are, of course, provided offices, which in the case of those departments occupying the newer buildings are spacious, sumptuously furnished, and air conditioned, staffed by numerous secretaries, clerks, stenographers, messengers, and other functionaries. Residences are not furnished the cabinet members, nor is

[16] These salaries and perquisites are paid not on the basis of membership in cabinet but because of administrative positions which are held in the departments and agencies. For purposes of convenience it seems well to deal with compensation at this point, but strictly speaking it is inaccurate to speak of compensation of cabinet members. The compensation referred to above applies to the secretaries of the nine departments; administrators may be paid as little as $10,000 per year. Legislation has been pending to increase the amount from $15,000 to $17,500 or more.

generous allowance made for expenses incident to entertaining. As a result, some officers have paid out their entire salary for the rental of suitably located residences. Others who have been very prominent in Washington social life complain that the expenses of entertainment eat up their entire income from the government. Most of the cabinet members seem to find it difficult to make ends meet unless they possess ample private means.

General Activities of Cabinet Members Attendance at cabinet meetings ordinarily will not require more than a few hours per week; the question may then be raised as to how members spend the remainder of their time. It must be remembered that the cabinet members are also the secretaries of the great administrative departments and in that capacity may find that the demands made upon them are such as to leave very little time or energy for anything else. They have a considerable discretion in deciding what they will do with their time. If they want to draft policies and actively administer their departments, they have an immense field in which to work, for even the smallest administrative departments are charged with broad responsibilities. In this case they will confer frequently with their general assistants and the permanent staff members in order to keep in touch with what goes on in the department. They may take an active part in making appointments, handling correspondence, receiving callers, tracking down complaints, negotiating with other departments, planning programs, interpreting their departments to the public, and cultivating the favor of Congress so that generous appropriations may be forthcoming. Some of them are content to leave routine matters almost entirely to their subordinates in the department so that they themselves may be free for other activities.

Speeches Many cabinet members find that speaking engagements make heavy inroads on their time and energy. Washington is the scene of numerous conventions, conferences, and other sorts of meetings. What is more natural than for these to expect a representative of the government to address the hundreds or thousands of delegates who pour in from various parts of the country? The President himself sometimes undertakes such assignments; Senators not uncommonly accept them. But in many cases the delegates are more interested in some administrative service and consequently urge the secretary of that agency to speak. A cabinet member who

enjoys speaking and who is willing to spare the time can easily keep a full schedule.

Social Engagements The social position of cabinet members is outstanding both in official circles and in private Washington society. In addition to participation in the social functions held at the White House, the cabinet members and their wives must do at least a minimum of entertaining themselves. If they are socially inclined and have the necessary funds, they may find themselves the hosts at numerous dinners, receptions, teas, and other affairs. Likewise they usually go out a great deal to diplomatic dinners, theater parties, balls, and many other functions associated with the whirl of society in the national capital.

PROPOSED CABINET CHANGES

Congressional Seats For many years there has been some agitation to give cabinet members seats in the houses of Congress, either with or without the right to vote. Officials of foreign cabinets are frequently members of legislative bodies and indeed serve as leaders of them.[17] In governments in which the relationship is not so intimate, cabinet members are still almost always permitted to attend the sessions, present proposals relating to their departments, and take part in the debate.[18] During the early years of the republic the House of Representatives clearly showed that it did not desire the presence of administrative officials at its sessions, even when the bills concerning their departments were being debated. Despite every argument, Congress has shown little interest in any modification which would give seats to cabinet members.[19]

[17] Where the cabinet form of government exists, this is always the case. The cabinet in England is an excellent example of such leadership.

[18] In Argentina and certain other countries ministers may speak, although they are not members of the legislative branch.

[19] However, in the first Congress department chiefs appeared on the floor of the houses and even took part in the debate. Both Secretary of State Jefferson and Secretary of War Knox spoke in Congress in 1789-1790. Because of the Anti-federalist opposition to Hamilton he was not permitted on the floor, and soon after the practice was discontinued, never to be revived. In 1865 a House committee and in 1881 a Senate committee reported favorably bills which would give cabinet members seats without votes. In 1912 President Taft announced that he also approved such an arrangement. All discussion, however, came to naught. The history of these proposals and a compilation of the "pro" arguments will be found in *Privilege of the Floor*

As a matter of fact, the situation involves less serious division and separation than appears on the surface. The basic work of lawmaking is being increasingly transacted in committee rooms rather than on the floor of Congress, and there is every reason to believe that this will continue to be the case. Cabinet members appear frequently at these committee hearings in order to reply to questions, to urge certain courses of action, or to defend their departments against charges that have been made. Thus they already have in large measure the right to speak. Unless the cabinet system were introduced, which stipulates that the cabinet shall stand or fall on its record, the mere giving of votes would not seem wise. It would simply concentrate more power in the hands of the executive without any similar increase in executive responsibility. Theoretical arguments and the practical example of England tell heavily in favor of the cabinet system, but its adoption here would involve such a drastic change in the American scheme of government that it seems quite improbable.[20]

Broader Representation Another criticism of the cabinet stresses its rather limited background. Many of the public questions currently confronting the nation have the most complex ramifications imaginable. Even for the most competent people it is not too easy to determine the national policy. The cabinet, it is said, does not provide very adequate representation for the newer agencies which would have perhaps fresher and less conventional points of view. The legislative branch is not given an opportunity to be heard; nor are the courts given any voice. Although this is an age of science, there is ordinarily not a single person in the cabinet who can advise with any authority in that field.[21] Business, farming,

to Cabinet Members: Reports Made to the Congress of the United States, Senate Document 4, Sixty-third Congress, special session of the Senate, 1913. For an extensive criticism of the proposal, see W. F. Willoughby, *Principles of Legislative Organization and Administration*, Brookings Institution, Washington, 1934, Chap. 13.

[20] For recent discussions of this problem, see Harold J. Laski, *The American Presidency*, Harper & Brothers, New York, 1940, Chap. 2; and E. S. Corwin, *The President: Office and Powers*, New York University Press, New York, 1940, pp. 304-305.

[21] However, Herbert Hoover, as Secretary of Commerce under Harding and Coolidge, represented the field of engineering, while Ray Lyman Wilbur, Secretary of the Interior under Hoover, had been a practicing physician previous to his position as president of Stanford University.

education, religion, and the arts may have no representative in its deliberations who can speak out of firsthand experience.

No one can deny the intricate character of current public problems, nor can one dispute the need of the best and most mature judgment to solve or alleviate those problems. The mistakes, the blundering in the dark, the premature or long-delayed decisions, and the opportunism of present-day governments is indeed most discouraging. The question is: Could these weaknesses of government be corrected or at least minimized by a cabinet of broader background? An enlarged cabinet might very well prove so cumbersome and unwieldy that it would break down of its own weight —as apparently happened in the case of the National Emergency Council. Yet it would be impossible to bring in representatives of the groups and skills noted above without very materially adding to the size.

Other Advisors To some extent these criticisms lose sight of the fact that the cabinet is not the only advisory instrumentality available. Presidents ordinarily have wide contacts with legislators, judges, the more vigorous administrators, men of affairs, educators, the clergy, and perhaps even scientists. If they do not themselves have all of these associations, it may be that members of the cabinet can add these backgrounds. The public-relations secretary of the President follows the sentiment of the various groups as mirrored by the newspapers. The President himself may read books which reflect the studied conclusions of certain experts.[22] All of this is not to minimize the seriousness of the problem of adequate representation of national interests in the cabinet, but it does help to view the problem objectively.

Strengthening the Advice We have already stressed the advisory character of the counsel which the cabinet offers the chief executive. And we have likewise stressed that the President may or may not be guided by what his cabinet suggests—there is no force behind the advice which they give beyond the respect that the President may have for them. The striking growth of the presidential office has given the holder of that office tremendous power, which may be directed toward beneficial ends or employed to men-

[22] In his press conference of July 22, 1941, President Roosevelt called the attention of his visitors to two books on public affairs that had recently appeared and recommended them to the American public.

ace the very foundations of the republic. Under such circumstances the need for wise counsel is deemed especially urgent by competent observers.

Congressional Representation Professor Corwin concludes his substantial study of the presidency with the observation that "presidential power is dangerously personalized." [23] One reason for this state of affairs, he sees in the "haphazard method of selecting Presidents," but perhaps more important is the lack of a "governmental body that can be relied upon to give the President independent advice and whom he is nevertheless bound to consult." [24] Mr. Corwin proposes a new cabinet which would substitute the "leading members of Congress" for the departmental secretaries or which would combine the leaders of the two legislative branches with certain of the more general officials, such as the Secretary of State, the Secretary of the Treasury, and the Attorney General.[25] No constitutional obstacles lie in the path of such a transformation; nor would the presidential system of government be abandoned in favor of the cabinet form. Such a cabinet, Mr. Corwin believes, would provide far more mature and solid advice than can be expected from men "whose daily political salt" comes from the presidential table.[26] "It would capture and give durable form to the casual and fugitive arrangements by which Presidents have usually achieved their outstanding success in the field of legislation." [27] A number of others have recently given attention to the same problem and proposed strengthening the cabinet in various ways, usually by bringing in congressional representation.

Selected Bibliography

Corwin, E. S., *The President: Office and Powers*, New York University Press, New York, 1940, especially Chaps. 3 and 7.

Finletter, Thomas K., *Can Representative Government Do the Job?*, Reynal & Hitchcock, New York, 1945.

Hinsdale, M. L., *History of the President's Cabinet*, University of Michigan Press, Ann Arbor, 1911.

[23] E. S. Corwin, *op. cit.*, p. 316.
[24] *Ibid.*, p. 316.
[25] *Ibid.*, p. 304.
[26] *Ibid.*, p. 304.
[27] *Ibid.*, p. 304.

Houston, D. F., *Eight Years with Wilson's Cabinet*, 2 vols., Doubleday, Doran & Company, Garden City, 1926.

Hull, Cordell, *The Memoirs of Cordell Hull*, 2 vols., The Macmillan Company, New York, 1948.

Lane, F. K., *The Letters of Franklin K. Lane*, Houghton Mifflin Company, Boston, 1922.

Laski, H. J., *The American Presidency*, Harper & Brothers, New York, 1940, Chap. 2.

Learned, H. B., *The President's Cabinet*, Yale University Press, New Haven, 1912.

Privilege of the Floor to Cabinet Members; Reports Made to the Congress of the United States, Senate Document 4, Sixty-third Congress, special session of Senate, Government Printing Office, Washington, 1913.

Pusey, M. J., *Big Government; Can We Control It?*, Harper & Brothers, New York, 1945.

Redfield, W. C., *With Congress and Cabinet*, Doubleday, Doran & Company, New York, 1924.

Stimson, Henry L., and McGeorge Bundy, *On Active Service*, Harper and Brothers, New York, 1948.

Wilson, Woodrow, *Congressional Government*, rev. ed., Houghton Mifflin Company, Boston, 1925.

15 · *The President and Congress*

Cabinet Government In the world today there are two principal types of democratic government in actual operation: cabinet and presidential. Cabinet government, one of the significant contributions which the English have made, is based on a very intimate relationship between the executive and the legislative branches. The cabinet, which is the most important element of the executive in England, is chosen from among the leaders of the dominant political party [1] in the House of Commons. The cabinet drafts a program which is summarized in the message of the king to Parliament and then proceeds step by step to carry that program into effect. Although private members of the legislative branch may introduce bills of their own, there is very slight chance of their passage.[2] Furthermore, all proposals to spend public funds can originate only from the cabinet. The House of Commons may debate the various bills which the cabinet has prepared and in minor particulars may go so far as to amend them. However, if the House of Commons refuses to accept the general provisions of any bill or if major changes not acceptable to the cabinet are made, then the cabinet must follow one of two courses. It may resign at once and clear the way for a new cabinet which will receive the support of the House of Commons. Or, hoping that the voters will favor its policy, it may call for new elections, with the appeal to the electorate to choose "M. P.'s" who will uphold the cabinet's position. If the new membership of the house does act favorably on the controversial legislation, the cabinet is regarded as triumphant and consequently remains in office. But if the voters reelect the

[1] This is the case during normal times; however, during periods of national emergency, such as 1940-1945 for example, representatives of two or more parties may be included in the cabinet.

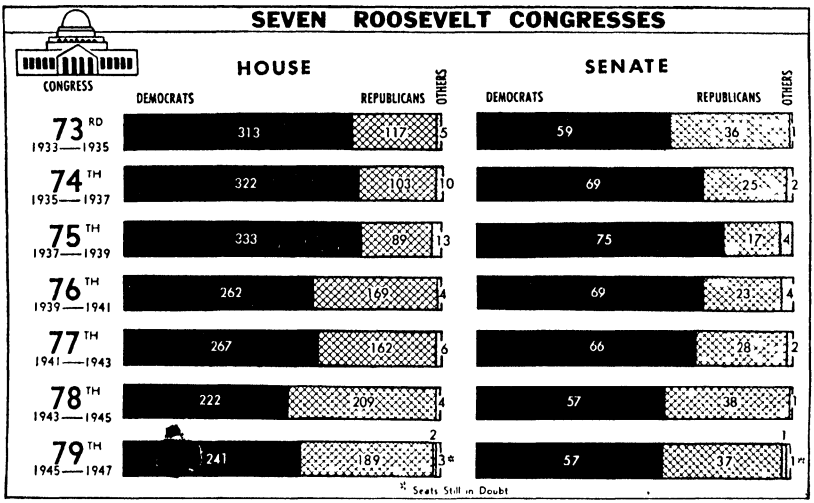
[2] Professor Laski asserts that only three such bills of any importance have been passed during the present century. See his *Parliamentary Government in England*, The Viking Press, New York, 1938, pp. 243ff.

same members, the cabinet has no alternative but to resign. It is apparent that the cabinet system goes far in guaranteeing harmonious relations between the executive and the legislative branches—if there is lack of unity changes will be made which will have the effect of restoring the equilibrium.

Presidential Government Presidential government, on the other hand, is a contribution which the United States has made to democratic institutions. In framing their constitutions many countries have examined the presidential form, but except for certain Latin-American countries none of them has seen fit to adopt it. This form of democracy separates the executive and the legislative branches, assigning to each a major role in the government. No machinery is provided for integrating the two—indeed the basic concept seems to be that the two will check each other. Of course, there is not an absolute separation of powers, for under the complex social conditions that now prevail such a type of relationship would produce chaos and even the breakdown of the entire governmental system. The men of 1787 saw fit to supplement separation of powers with the doctrine of checks and balances. Thus they gave the President the veto power, authorized the Senate to confirm presidential appointments and to ratify treaties, and permitted the legislative branch under extreme circumstances to remove a chief executive through impeachment proceedings.

Experience of the United States with Presidential Government Under a comparatively simple social system the separation of the executive and the legislative branches is not provocative of acute problems. There are no complicated regulatory functions to be exercised and hence the chief purposes of government are to protect the country against foreign attacks and to maintain internal order. General policies have to be worked out, but there is usually plenty of time. Moreover, the varying points of view held by the executive and the legislative branches may be quite valuable in arriving at a decision as to the exact nature of the policy. Since these relatively simple conditions existed in the United States during its early years, there was no crying need for integrating the two branches. The very independence of each made for a ruggedness that was highly prized by many Americans. As the industrial and social structures became more and more complex, the government was called upon to meet situations which had never been envisioned

by the forefathers. The lack of cohesiveness between the executive and the legislative departments became more and more evident, but the resourcefulness of the people made it possible to get along for many years without too great difficulty. The patronage system provided an extralegal tie of considerable strength; the political parties themselves contributed to a cementing of the executive and the legislative branches. During normal times Congress might pay very little heed to the recommendations of the President, despite



Pictograph Corporation for New York Times

the chains of party and patronage, but critical periods saw the members of Congress in a somewhat chastened mood, fearful of public sentiment, and in general willing to work with a President in setting up remedial measures. Nevertheless, the system has creaked and groaned under its burden of highly complicated problems.

The Future of Executive-legislative Relationships The experience of recent years seems to prove rather conclusively that the traditional relationship between the President and Congress is not too satisfactory in this day of immensely intricate public problems.[3] What then of the future relationship between these two

[3] For a thoughtful analysis by a member of Congress, see Estes Kefauver, "The Need for Better Executive-Legislative Teamwork," *American Political Science Review*, Vol. XXXVIII, pp. 317-324, April, 1944.

highly necessary branches of government? The introduction of cabinet government has been advocated. A fair-minded observer sees much in that system as used in England that is impressive. However, American traditions have run along somewhat different lines. Moreover, this change would require a drastic revamping of our constitutional system which might be accepted under sufficient pressure, but would encounter strong opposition. It has been argued that a more logical step in the United States would be the transformation of the cabinet into a body either entirely or largely made up of congressional leaders.

FORMAL RELATIONS OF THE PRESIDENT AND CONGRESS

We have already pointed out that the forefathers deemed it prudent to *separate* the three branches of federal government, rather than to confer all authority on one branch or to integrate the executive and the legislative branches under a cabinet form of government. At the same time, they were men of experience and appreciated the necessity of co-operation. Consequently the executive was given certain powers relating to the legislative process, while Congress received several grants concerning the President. It is appropriate at this point to look at the functions of the President which have a direct bearing on the enactment of laws.

Sessions of Congress There are countries which permit the executive to call the legislative body into session and to dismiss it at his pleasure. The framers of the Constitution had no disposition to confer this authority on the American President, for they had experienced the arrogant and dictatorial practices of the colonial governors who sometimes ruled without legislatures. However, they did anticipate occasions when the two houses of Congress might not be able to agree on a date of adjournment and hence empowered the President to act.[4] The opening date for congressional sessions is fixed by the Constitution, but the time of adjourning is left to the discretion of Congress itself. By insisting upon the disposal of certain business before adjournment upon threat of calling the members back at once into special session, the President has some-

[4] Art. II, sec. 3. This anticipation has not been realized in practice, for Congress decides on a date of adjournment without too much difficulty. In October, 1914, however, Woodrow Wilson was urged to, but did not, use his power to act; see *New York Times*, October 24, 1914.

thing to say about how long Congress will meet, although this does not involve fixing an exact date of adjournment.

Special Sessions An important formal control which the chief executive may exercise is his right to call special sessions. Before the Lame Duck Amendment provided that Congress assemble in regular session shortly before the President himself took office, it was a common practice for new Presidents to call special sessions soon after they were inaugurated in March. They wanted the Senate to confirm appointments and perhaps preferred to have attention given to general legislative business at once rather than after some nine months had elapsed. Inasmuch as Congress now starts a regular session just before a President is inaugurated, there is far less reason for special sessions than before the adoption of the Twentieth Amendment.

Messages The President is required by the Constitution to "give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." [5] How frequently such reports shall be made and what they shall concern is left to the discretion of the President. It is also up to him whether the messages will merely be sent to be read by a clerk or whether he will go in person to deliver them to the assembled Congress. From the very beginning Presidents ordinarily have prepared fairly elaborate messages to be transmitted at the convening of a new session. In addition to comments on the general situation confronting the country, the chief executive usually summarizes the legislation which seems appropriate and may even go so far as to furnish the draft of one or several bills. After Congress has finished the preliminaries of its new session, it sends a formal notice to the President informing him that it is ready to receive any communications which he may wish to make. The chief executive then responds by sending a written message or going himself to address a joint session.

Presidents Washington and Adams followed the latter practice of delivering some of their most important messages in person, but that custom was permitted to lapse for more than a century, until Woodrow Wilson decided to resurrect it. The most recent chief executives have not followed a uniform rule in this respect: Harding continued the Wilson precedent; Hoover preferred to revert to the

[5] Art. II, sec. 3.

earlier written communication; Roosevelt and Truman have frequently gone in person, and, it may be added, have undoubtedly increased their effectiveness by so doing. Of course, even if a President delivers an oral address to review the state of the nation, he will make much use of the written communication also, for following the general message as many as fifty supplementary messages may be sent to Congress during a single session. Immediately following the first message will arrive a more or less elaborate communication transmitting the annual budget. At this early stage a message dealing with economic matters is also submitted. Then, as other items arise, the chief executive may send in brief communications if the matter is of minor consequence or longer ones if the occasion seems to warrant it.

Spoken versus Written Messages Whether a President will find it advisable to go to Capitol Hill to speak to Congress or send a message for a clerk to read depends rather largely upon his own talents. Clerks pay more attention to presidential messages than to ordinary documents which they mumble through, but even so their reading usually leaves something to be desired. Certain chief executives have prided themselves on their commanding ability as public speakers—it seems only logical that these Presidents should visit Congress to say orally what they have in mind. More attention will ordinarily be paid to the sentiments uttered directly by a President than to secondhand reading by an employee of the Senate or House of Representatives. On the other hand, no chief executive would find it wise to deliver all of his communications orally, for this would consume a considerable amount of his time as well as impose upon the time of Congress.

As it is, the formal addresses of the President are the occasion of some of the most stately ceremonies held in Congress. After the Senators and the Representatives have assembled in the chamber of the House of Representatives, word is sent to the President who ordinarily waits in the room set aside for his use in the Capitol Building. Members of the two houses then escort him up to the place on the dais from which he is to speak; the members of both houses arise as he enters the chamber; and he is presented quite ceremoniously to the assembled legislators and to the radio audience by the presiding officer, frequently the Vice-President. Care-

ful attention is usually paid to what the President says and there is suitable applause both during and after the speech. Of course, if oral addresses were everyday affairs much of this ceremoniousness would probably be dropped.

Influence of Presidential Messages The influence of messages varies widely. During the years immediately following 1933 a message was as revealing as a speech from the English throne,[6] for one could be certain that what was recommended would be carried out. At other times the relations between the executive and the legislative branches have been so strained that virtually no attention has been given to presidential desires. For the most part, their role has been somewhat in between these extremes—it has been dangerous to take them at their face value, but at the same time they have given some indication of the course of future legislation.

Initiating Bills The President does not have the technical right to introduce bills into one of the houses of Congress, for the rules of both houses limit that action to members. Nevertheless, for all practical purposes the chief executive does have this power and does make use of it more or less frequently. For many years the administrative departments have drafted revisions, amendments, or supplementary bills in matters which particularly concern them. These may be brought up directly through the kind offices of a friendly Senator or Representative, but they sometimes are routed via the executive office. Increasingly the President has gone beyond the point of sending in mere changes in existing or pending legislation—during the years immediately following 1933 almost every one of the many far-reaching congressional enactments originated in the executive office. Since that time there has been somewhat of a return to the earlier practice, under which individual legislators initiate bills, but an important precedent has been established. When a bill which has been drafted by the assistants of the President reaches one of the houses, it is perforce introduced by a friendly member, just as any other bill. Nor is there any special committee or procedure for such bills provided by the rules, but

[6] The speech from the throne is prepared by the cabinet. Inasmuch as the cabinet prepares the government program and must be supported unless there is to be an overturn in government, it is possible to place more or less complete dependence upon it.

no one can doubt that they sometimes are accorded very special attention.

Budgetary Duties During those Elysian days when the United States found it easy to raise all of the money it needed for public expenditures and recurring deficits and gigantic debts were unknown, the executive had comparatively little financial planning to do. Of course his office required appropriations and the administrative departments nominally under his control accounted for most of the expenditure of public funds, but Congress undertook to be the general overseer. The experiences of World War I demonstrated among other things that a more responsible financial system was required. Congress recognized this when in 1921 it passed the Budget and Accounting Act, which placed the preparation of a budget in the hands of a Bureau of the Budget. The first directors of this bureau were nominally under the chief executive and, of course, consulted him in regard to general policies. The President's Committee on Administrative Management recommended the placing of the Bureau of the Budget directly within the executive office. Despite the defeat of the general reorganization bill based on its 1937 report, this one feature was eventually authorized by Congress and a thorough reorganization of the budgetary machinery was undertaken. An administrator [7] rather than a man of affairs was appointed director; a notable increase in staff soon followed; and the budgetary office took on many functions that had not hitherto been performed.[8] At the present time, then, the preparation of a budget is carried on directly within the executive office of the President under policies which he has adopted.

Submission to Congress During the first week of a new session the President transmits to Congress the tentative budget together with an explanatory message. The complexity of this budget is now such that even an elaborately organized Committee on Appropriations in the House of Representatives cannot ordinarily dissect it in complete detail. Changes are usually made before the budget becomes law, but the influence of the chief executive in determining the amounts available for the operation of the various administrative departments is very great at present.

[7] Harold D. Smith was brought in from the Civil Service Commission in Michigan to take over this position.

[8] These are discussed in some detail in Chap. 23.

THE VETO POWER

Another function which the chief executive exercises in the field of legislation is so important that it requires more than a paragraph. The veto power is accorded one of the longest sections of the Constitution [9] in contrast to other important matters which receive no mention at all or are disposed of in a few words.

General Character of the Veto Power The Constitution stipulates that every "bill, order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States." [10] It adds: "and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives." [11] It has been held that this does not apply to proposed amendments of the Constitution [12] nor to concurrent resolutions which merely express the sentiment of Congress without having any force of law behind them. Except for votes on adjournment which are specifically exempted by the Constitution, all other acts of Congress are subject to the presidential veto. But it should be noted that the veto is definitely not of the absolute type, for Congress may override this presidential barrier by casting a two-thirds vote in favor of a controversial measure.

Presidential Handling of Bills and Resolutions After the presiding officers of the Senate and the House of Representatives have duly signed a bill or resolution, attesting that it has been passed by the necessary majority in their respective houses, a messenger delivers this bill or resolution to the office of the President. The chief executive may proceed to sign the bill—if it is of outstanding interest, sometimes in the presence of its sponsors in the Senate and the House of Representatives.[13] In many cases the President is not

[9] Art. I, sec. 7.
[10] Art. I, sec. 7.
[11] Art. I, sec. 7.
[12] The first ten amendments were not submitted to the President for his signature. In *Hollingsworth* v. *Virginia*, 3 Dallas 378 (1798) the Supreme Court remarked, although it did not directly rule, that the President's signature to proposed amendments is not necessary.
[13] A colorful ceremony sometimes takes place with newspaper photographers present to take photographs. The pens which the President uses to sign may be presented to sponsors as a memento.

particularly enthusiastic about a bill or joint resolution and wishes to take no personal responsibility for it; on the other hand, he is not so opposed to it that he wishes to veto it. If he allows the bill to remain for ten days on his desk without any action and Congress has not in the meantime adjourned, the bill becomes law without his signature. In both of these cases the President then transmits the bill or resolution to the Secretary of State for promulgation and publication in the *Statutes of the United States*. If he deems a bill or resolution distinctly objectionable he can make direct use of the veto power. In this event the President refuses to sign and returns the bill or resolution to the house of Congress in which it originated within ten days, usually with a statement of reasons why he refuses to approve.

"Pocket Vetoes" Toward the end of a session numerous bills and resolutions are passed by Congress in an effort to clean up accumulated business. These go to the President in batches. If Congress adjourns within ten days after the President receives these bills and resolutions and he takes no action, it is said that the bills or resolutions have been "pocket vetoed." A considerable number of these last-minute bills and resolutions fail to become law as a result of the inaction of the President. The chief executive may not be particularly opposed to them, but he does not want to take the responsibility of giving his positive approval, perhaps because he has not had the time to investigate. A period of ten days is not very long in which to decide what to do about several hundred congressional proposals [14] and it is probably expedient for a President to use the "pocket veto" generously.

The Ten-day Provision For more than a century it was believed that no bills could be signed by the President after the adjournment of Congress, but in 1920 Woodrow Wilson successfully attempted to overthrow that precedent by signing several bills within the ten-day period specified by the Constitution.[15] This

[14] See the case of *Okanogan Indians* v. *United States*, 279 U. S. 655 (1920). The court held that ten days does not include Sundays, that calendar rather than legislative days are intended, and that adjournment means the adjournment at the end of a session rather than the final adjournment of a Congress which takes place only every two years.

[15] President Wilson received bills when he was in Europe in connection with the peace terms. It was held that ten days did not include the period elapsing between the dispatch of the bill to the office of the President and

extension of time, which was upheld by the Supreme Court by unanimous vote,[16] is of considerable advantage in that it affords the President additional time to decide what action to take. Ten days is none too long at best—indeed states sometimes permit their governors two or three times that period in which to dispose of their legislative work.[17]

Use of the Veto Power The pocket veto is used quite frequently by Presidents, as we have pointed out above. The early holders of the office used the direct veto very sparingly. It was not until Andrew Jackson assumed office that any considerable disposition to employ this control was evident[18]—and even including his vetoes there were just over fifty presidential vetoes from the establishment of the republic down to the Civil War.[19] Recent Presidents have a more impressive record, although there has been little if any tendency to abuse the power. In comparison with state governors, the Presidents have had records of striking restraint, for the former frequently veto as many as 10 or 15 per cent of all bills and resolutions received and occasionally as many as one-fourth or more. Even the most vigorous President has not approached a veto record of 1 per cent.[20] Perhaps more significant than the increased number of vetoes during recent administrations has been the policy of executive questioning of the wisdom of certain measures. The first Presidents based their few vetoes on an apparent conflict with the Constitution or on technical defects in the wording. The more recent holders of the executive office have not hesitated to veto bills that were perfectly constitutional and not at all defective in form but which have seemed to them to be contrary to the public interest.

Overriding of Vetoes When the President returns a vetoed

his receiving of the bill in Europe. In other words he was allowed ten days in which to take action after he received the bill in Europe.

[16] In *Edwards* v. *United States*, 286 U. S. 482 (1932).

[17] Of course, state legislatures often pass a larger proportion of their bills at the very end of a session.

[18] Jackson was the first President to veto because he objected to the contents. His predecessors had based vetoes only on conflict with the Constitution or defects in drafting.

[19] The exact number was fifty-one.

[20] For an article on the use which recent Presidents have made of this power, see K. A. Towle, "the Presidential Veto Since 1889," *American Political Science Review*, Vol. XXXI, pp. 51-55, February, 1937.

measure to the house of Congress in which it originated, there may be enough support to repass it by a two-thirds vote in both houses and thus override the veto. However, the pressure on Congress must be exceptionally strong to influence two thirds of the membership, for Congress does not as a rule like to take that step. Cleveland with forty-two vetoes was overridden only five times, while Theodore Roosevelt with the same number to his credit actually lost only once to Congress. Franklin D. Roosevelt found Congress recalcitrant on certain measures, but this was by no means commonplace where vetoes were involved.

Proposals to Change the Veto System There are two proposals to modify the veto power which deserve attention. The first would make it easier for Congress to pass bills over a presidential veto, while the second would cause a notable extension in the President's authority. Inasmuch as some citizens believe that the President is already too powerful and inasmuch as the two-thirds requisite for passing over a veto is very difficult to obtain in practice, it has been suggested that Congress be permitted to cast aside a veto simply by repassing a bill with an ordinary majority. A few states allow such a simplified overriding of executive vetoes, it is argued; so why not extend such a scheme to the national sphere. Considering the limited use which Presidents have made of the veto power, there is far from an acute need for such a change —much less than in the case of states where vetoes are much more common. To what extent an easier requirement would cause more disregard of vetoes is a debatable question. Congress sometimes passes bills which it doesn't favor, simply to escape the intolerable pressure on itself. If overriding were made easier, greater responsibility would be loaded on Congress. Considering the fact that few vetoed measures have been widely appraised as meritorious, it seems very doubtful that relaxing the restrictions is desirable.

The Itemic Veto The second proposed change would add the itemic veto to the general form already in operation. Particularly in appropriation bills, the President is confronted with highly objectionable sections which have been the result of congressional "hi-jacking." In other words, a small group has demanded a concession as a price for supporting a general appropriation measure. The rank and file of congressmen have not favored the raid on the Treasury; but they have permitted it to sneak in, because they

realized that the big appropriation bill has to be passed and that it would require a vigorous fight to pass it without the support of the clique urging the inclusion of some "pork." When the big bill comes to the executive office, the objectionable item may be glaring. Yet under the present veto arrangement there is no practical way to eliminate it—either the President must accept the whole measure or throw all of it out. The itemic veto would allow a President to strike out the objectionable section, while at the same time approving the bill as a whole.

Almost forty states now empower their governors to exercise the itemic veto in connection with financial measures.[21] There can be little question that a presidential itemic veto would result in substantial savings and, what is perhaps more important, obviate the misuse of federal funds. From a dollars-and-cents standpoint there is a great deal to be said in favor of this extension of the veto function. The chief objections come from two sources. In the first place, it is argued that Congress as the representative of the people should be squarely confronted with financial responsibility and that adding an additional burden to the chief executive might be the last fatal straw. In the second place, those who are alarmed by the far-reaching powers which are already attached to the presidential office plead for no further enlargement. Franklin D. Roosevelt went so far in his budget message of 1938, as to ask Congress to give him the itemic veto over appropriation bills. The House of Representatives inserted a grant of this power in a general appropriation bill, but the Senate omitted it on the ground that a constitutional amendment would be necessary to bring about such a change.[22]

Threats of the Use of the Veto Power It is not at all uncommon for Presidents to threaten the use of their veto power in connection with important measures which are pending in Congress. Theodore Roosevelt is ordinarily given credit for initiating

[21] In England all appropriation bills must be introduced by the cabinet. Professor H. J. Laski, in his *The American Presidency*, Harper & Brothers, New York, 1940, advocates rather strongly that the same system be adopted in this country. He points out that if congressmen could not seek appropriations the irresponsible use of public funds would be considerably limited. See pp. 230-231.

[22] An article on the item veto under the initials V. L. W., entitled "The Item Veto in the American Constitutional System," appeared in the *Georgetown Law Journal*, Vol. XXV, pp. 106-133, November, 1936.

such a device—at least it fits into his "big stick" philosophy. His successors have made increasing use of it, frequently with good results. If the chief executive intimates that he is thoroughly opposed to a measure or particularly that he will refuse an entire bill because he cannot accede to the inclusion of certain provisions, it is quite within the realm of possibility that the bill will be dropped or that changes will be made so as to obviate the objectionable portions.

OTHER EXECUTIVE CONTROLS OVER CONGRESS

Personal Conferences A chief executive can go far in influencing legislation if he is willing to work intimately with the leaders of Congress. The President, no matter how mediocre his actual endowments may be, acquires great prestige from the exalted character of his office. If, then, he calls in the dozen or so men who are regarded as leaders of the Senate and the House of Representatives, discusses his views with them, asks for their assistance, and gives them some of the credit for what is done, it is entirely likely that he will achieve concrete results. Professor Corwin [24] maintains that almost without exception the Presidents who have accomplished far-reaching legislative programs have made use of this strategy.

Patronage In another connection [21] we have dealt with the patronage which the President has managed to retain despite all of the efforts which have been directed for more than half a century toward abolishing the spoils system. No one can dispute the significance of this patronage as a legislative control. The congressmen have supporters who ache for appointments and contracts; the President has a reasonable amount of these at his disposal; *ergo*, the members of Congress agree to meet the wishes of the President in return for concessions which he grants in the way of offices.

National Leadership Considering the role of the President in American life, it was pointed out [25] that the desire of the people for a leader confers on the presidency very great influence in all sorts of matters. Not the least of these is the legislative process.

[23] See his book *The President: Office and Powers*, New York University Press, New York, 1940, p. 304.
[24] See Chap. 13.
[25] See Chap. 13.

Congressmen are usually very sensitive to large-scale pressure directed against themselves; if the President appeals to the people to support his legislative program, it is quite possible that this intense popular pressure will be forthcoming. Some chief magistrates have been more gifted in making use of this device than others—obviously a daring man who speaks with eloquence and is reasonably colorful will be more appealing to the people than one who is cold, cautious, and an uninspired speaker. When the patronage control breaks down and the formal powers of the office prove ineffective, Presidents usually resort finally to stirring up popular support which will in turn "put the heat" on Congress.

Study Commissions Several recent chief executives have appointed commissions to study and report on complicated public problems. Some of these have been attended by much fanfare and have issued recommendations which have received wide publicity. Other commissions have not for one reason or another been anything like as much in the public eye and yet have produced reports which have received the attention of influential persons.

CONTROLS EXERCISED BY CONGRESS OVER THE PRESIDENT

Thus far we have assumed that the checks which the Constitution provided in part have operated only to the advantage of the President and at the expense of Congress. The philosophy underlying the system of checks stresses their reciprocal character. Hence we must pause before we pass on to another chapter to note controls which the legislative branch can exercise over the executive. These will all be discussed in more detail under the powers of Congress,[26] but they should be kept in mind in this connection also.

Control Over the Purse Perhaps the greatest dependence of the executive on the legislative branch is in connection with the purse strings. No money can be paid out of the public treasury except on the authorization of Congress; the executive has need for enormous sums of money for his many projects; therefore, Congress can at times dictate to the President. The budget-making authority now conferred on the President has diminished the actual financial control of Congress to some extent, but even so it remains of distinct importance.

Enactment of General Laws The Constitution gives Con-

[26] See Chap. 18.

gress the power to enact laws which regulate to a considerable extent the duties of the chief executive. He has from the Constitution itself the appointing power in general, but the laws passed by Congress give to him the specific appointments. Virtually all of the major peacetime projects drafted by a chief executive involve the passing of laws to create the necessary machinery. Here again the President must wait upon Congress before he can go ahead.

Miscellaneous The Senate has the authority to confirm the appointments of the President and to ratify the treaties which he negotiates with foreign powers. Needless to say, the exercise of these powers by the Senate can cause a President the greatest worry and even embarrassment. While the Senate is disposed to confirm the great majority of appointments and to ratify the treaties submitted by the President, it is fond of investigations and delay. When it refuses outright to ratify an important treaty, the results are, of course, far reaching. To point to a fourth control, it may be noted that the President does not have a monopoly on commissions, for Congress is itself rather fond of setting up such agencies.[27] These may be more partisan than the executive committees, but their findings are often hailed by large numbers of citizens. Finally, in extreme cases the House of Representatives may vote articles of impeachment against a President which if upheld by the Senate will lead to his removal from office.

Selected Bibliography

Binkley, W. E., *President and Congress,* Alfred A. Knopf, New York, 1947.

Black, H. C., *The Relation of Executive Power to Legislation,* Princeton University Press, Princeton, 1919.

Brogan, D. W., *Government of the People,* rev. ed., Harper & Brothers, New York, 1944, Part IV, Chap. 3.

Chamberlain, L. H., *The President, Congress, and Legislation,* Columbia University Press, New York, 1946.

[27] There are several studies of this control. See, for example, M. E. Dimock, "Congressional Investigating Committees," *Johns Hopkins Studies in History and Political Science,* Vol. XLVII, pp. 1-182, 1929; E. J. Eberling, *Congressional Investigations,* Columbia University Press, New York, 1928; and H. L. Black, "Inside a Senate Investigation," *Harper's Magazine,* Vol. CLXXII, pp. 275-286, February, 1936.

Corwin, E. S., *The President: Office and Powers*, New York University Press, New York, 1940, Chaps. 6-7.

Finletter, Thomas K., *Can Representative Government Do the Job?*, Reynal & Hitchcock, New York, 1945.

Herring, E. P., *Presidential Leadership; the Political Relations of Congress and the Chief Executive*, Farrar & Rinehart, New York, 1940.

Hill, J. P., *The Federal Executive*, Houghton Mifflin Company, Boston, 1916.

Johnsen, J. E., comp., *Increasing the President's Power*, The H. W. Wilson Company, New York, 1934.

Laski, H. J., *The American Presidency*, Harper & Brothers, New York, 1940, Chap. 3.

Marcy, C. M., *Presidential Commission*, King's Crown Press, New York, 1945.

Milton, G. F., *The Use of Presidential Power 1789-1943*, Little, Brown & Company, Boston, 1944.

Pusey, M. J., *Big Government; Can We Control It?*, Harper & Brothers, New York, 1945.

Rauch, Basil, *The History of the New Deal 1933-1938*, Creative Age Press, New York, 1944.

Roosevelt, F. D., *On Our Way*, The John Day Company, New York, 1934.

Taft, W. H., *Our Chief Magistrate and His Powers*, Columbia University Press, New York, 1916.

Wilson, Woodrow, *Congressional Government*, rev. by R. S. Baker, Houghton Mifflin Company, Boston, 1925, Chap. 5.

16 · *The House of Representatives*

One of the most perplexing and controversial questions which the framers had to face involved the exact nature of the legislative branch of the government. Should such an agency be bicameral or unicameral? Should the large states and the small states all have the same legislative representation or should some attempt be made to equalize the representation with the size of the state? What about the method of choosing members of the legislature? Ought they be elected directly by the voters or would it be more advisable to set up a system of indirect election? All of these and other points were raised in the convention and provoked heated arguments—so much so that at times they seemed likely to wreck the efforts of the delegates perspiring through a hot Philadelphia summer. Eventually it was possible to arrange compromises which, although not entirely satisfactory to some of the states, nevertheless saved the day.

Bicameral versus Unicameral Legislature One of the most momentous decisions made by the convention of 1787, often referred to as the "great compromise," made it possible for both small and large states to feel that their interests had been safeguarded. This provided that the legislature would be a bicameral body. The lower chamber, constructed on the basis of the claims of the populous states, would have proportional representation; and the upper chamber, organized to satisfy the small states, would represent the states equally whether large or small.

It is generally conceded that this arrangement has worked out reasonably well. The equal recognition of small states means that the Senate can theoretically be controlled by a small fraction of the population, perhaps one fifth; it also gives to six states with approximately fifty million people only twelve Senators.[1] Nevertheless,

[1] The states of New York, Pennsylvania, Illinois, Ohio, Texas, and California have about 40 per cent of the entire population, but only twelve Senators.

there has been little evidence of divisions on major questions based on small-state versus large-state considerations. Both types of states stand together if they are primarily agricultural in character; similarly states irrespective of size generally see eye to eye if they have the same industrial interests. All in all, the bicameral system, embodying as it does in Congress recognition both of population and of state integrity, has been advantageous.

MEMBERSHIP IN THE HOUSE

Size Inasmuch as the House of Representatives is based on population, its size is not specified by the Constitution beyond the point of stipulating that there shall not be more than one member for every thirty thousand people.[2] Congress has from time to time fixed the exact number of members by law, following until the present century the general principle that as the population has grown the size of the House should be enlarged. The first House of Representatives had only sixty-five members; that number gradually increased until for three decades now it has been stationary at 435. In spite of the notable expansion in seats the number of people represented by a single member has grown from approximately thirty-three thousand in 1793 to slightly over three hundred thousand in 1940.

The Problem of Unwieldiness By 1910 the membership had become so large that widespread sentiment against additional enlargement developed. In that "horse-and-buggy" period, when amplifying systems were still mere visions of creative geniuses, only the "leather-lunged" representatives could make themselves heard by their colleagues. More than that, the House had become unwieldy and cumbersome.[3] Nevertheless, after the census figures of 1920 became available, considerable pressure manifested itself for a further increase to 470. The House of Representatives went so far as to pass a bill to authorize this enlargement, but the Senate, more removed from the actual scene of battle, refused to concur. Despite all efforts to reach a decision, no action was taken during the 1920's to carry out the constitutional mandate stipulating a reap-

[2] Art. I, sec. 2.

[3] The unwieldiness of the House of Representatives is not entirely attributable to its large size. European legislative bodies have operated fairly smoothly with six hundred or more members. The lack of leadership in the House of Representatives enters into the situation.

portionment every ten years. The states which had not added enough population to keep their 1910 allotment of seats under a reapportionment were especially indignant at the very mention of any step which would deprive them of seats. No state had ever had to take a reduction in representation and a precedent of more than a century was difficult to break.

Automatic Reapportionment Nevertheless, by 1929 Congress felt impelled to take steps that would prevent a continued disregard of the Constitution during the 1930's.[4] It was agreed that the size of the House of Representatives should be fixed at 435 unless subsequent action changed that number. Furthermore, it was specified that, unless Congress otherwise reapportioned the seats, the Bureau of the Census computation of the number to which each state is entitled on the basis of the decennial census should become effective in the second succeeding Congress. Congress did not otherwise apportion following the 1930 census and therefore in 1932 a new distribution went into effect which caused twenty-one states to lose from one to three seats each and eleven states to gain from one to nine seats each. The act of 1929 left certain technical points unsettled, with the result that subsequent legislation was passed in 1940 which outlined the exact method the Bureau of the Census should use in computing the seats to be assigned to the various states. Following the taking of the 1940 census, proposals were again made to increase the size of the House so that certain states would not be obliged to surrender seats already held. However, no action was taken on these bills and consequently the apportionment calculated by the Bureau of the Census was put into effect automatically in 1942.

Constitutional Provisions in Regard to Membership The Constitution goes into considerable detail in prescribing the rules that regulate membership in the House of Representatives. The Fourteenth Amendment provides that "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." [5] It then proceeds to order that representation shall be proportionately reduced in the case of those

[4] For additional discussion of this act, see Z. Chafee, "Congressional Reapportionment," *Harvard Law Review*, Vol. XLII, pp. 1015-1047, June, 1929.
[5] Sec. 2.

states which deny or abridge the suffrage of citizens who possess the proper age qualifications and have not engaged in rebellion or crime.[6] This mandate has never been observed, despite the disenfranchisement of Negroes by certain states, and at present it must be considered more or less of a "dead letter." Those citizens who are permitted to vote for members of the most numerous house of a state legislature must be accorded the same privilege in the case of members of the House of Representatives.[7] Every state is entitled to at least one representative irrespective of its population.[8] Elections are to be held "every second year by the people of the several states" [9] for the purpose of electing Representatives. "The times, places, and manner of holding elections shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations." [10]

Qualifications of Members The formal qualifications which a candidate for the House of Representatives must offer are not onerous. Beyond prescribing a minimum age of twenty-five years, citizenship in the United States of at least seven years, and residence in the state from which he is elected,[11] the Constitution leaves the field open to all comers. Nevertheless, custom and usage have ordained that a candidate who expects to be taken seriously shall possess additional qualifications. An age of twenty-five years would constitute a serious handicap in all except the rarest instances; indeed an age of under forty might very well serve to militate against election. Representatives average from just under fifty to approximately fifty-five years of age, depending upon the particular Congress.[12] Citizenship of only seven years on the part of a particular candidate would certainly not be regarded as acceptable by many voters. Merely being "an inhabitant of that state in which he shall be chosen" is not a very adequate recommendation in the case of most candidates, for there is a psychology in many political circles which causes newcomers to be regarded with suspicion and con-

[6] Sec. 2.
[7] Art. I, sec. 2.
[8] Art. I, sec. 2.
[9] Art. I, sec. 2.
[10] Art. I, sec. 4.
[11] See Art. I, sec. 2.
[12] During the present century a computation of ages as reported in the *Congressional Directory* reveals a range of from approximately forty-nine to just over fifty-five years as an average.

siders residence of fifteen or twenty years in a locality temporary sojournment. Of course, political prominence is virtually a *sine qua non*, although occasionally relatives of deceased politicians may be given the mantles of their departed, and political machines may designate puppets who have never before been in the public eye. But these exceptions only go to prove the rule that successful candidates are those who have long taken an active part in state and local politics.

Occupational, racial, social, and religious qualifications may or may not be expected, depending upon the time and place. Lawyers far outnumber other occupational representatives in the House of Representatives, although it may be noted that a considerable proportion of those who label themselves as "lawyers" have not practiced for years if they ever did much in that profession—they are in reality professional politicians. The first congressional district of Illinois has for some years elected a Negro to the House of Representatives, while other districts have been fond of Irish, Italian, and Jewish sons. However, many districts have no definite preference, although they might refuse to accept candidates of unconventional racial background. During the Ku Klux Klan revival of the 1920's religion came to the fore as a factor in selecting congressmen; under ordinary circumstances, however, it is much less significant, although there are districts where Roman Catholic faith would be a decided advantage or a handicap at any time.

District Residence The most important qualification which has been laid down by custom relates to residence of Representatives. The Constitution requires only legal residence in the state, but that has long since been modified to mean residence in the congressional district. Custom has been so insistent on this identification with a district that it is now unheard of for any other choice to be made—at least as far as technical residence is involved. It is only fair to point out that many Representatives spend little or no time in their districts after they are elected and in some instances finally feel so established in Washington that they acquire permanent residences there. But let a candidate not even nominally from a district dare to seek the local seat and one might suppose that homicide or treason had been committed.

The Problem of Dividing a State into Districts After the states have been assigned a certain number of seats in the House of

Representatives, it becomes necessary for them to divide themselves up into that number of congressional districts. Most of the states do redistrict with reasonable celerity, but there are a few that consistently ignore the constitutional mandate. Illinois, for example, has not seen fit to revise its districts since 1901, although the number of seats assigned to it has increased. When a state fails to redistrict itself after additional seats are apportioned it, Representatives at large are necessitated.[13] Thus voters choose their district Representatives and then proceed to help in selecting one or more Representatives from the state at large. If the state has lost seats, it is especially imperative that a prompt redistricting be accomplished, for otherwise the sole alternative will be electing all of the Representatives at large from the state.

Unequal Population One of the most serious results of the failure of states to redistrict themselves every decade is a striking disparity in population among the various districts. Illinois, for example, maintains congressional districts in the metropolitan region of Chicago which include within their boundaries something like 900,000 people. At the same time, it continues downstate rural districts with about 150,000 inhabitants. New York had as recently as 1933 one district with 799,407 people and another with 90,671. Fortunately the situations described are extreme, but it is not at all uncommon to find districts which are more than a little out of line. The hostility which rural areas display toward cities accounts for much of this inequality. Rural sections still control the legislatures of many states and have managed to prolong their domination, even after urban residents have become a majority. There is no adequate machinery to compel the ironing out of these inequalities. Appeals have been made to the courts—even to the Supreme Court of the United States—but with no results, for the courts have ruled that such matters are political and do not fall within their jurisdiction. Congress could act if it chose by refusing to seat Representatives from those states which transcend the constitutional prescription. However, Congress is not fond of dealing with problems the solution of which would lead to resentment by local groups.

Gerrymandering The task of dividing states up into congressional districts is entrusted to state legislatures, which are, of

[13] There have recently been ten congressmen at large from six states having more than a single seat.

course, partisan in character. Therefore, it is not strange that the dominant political party in a particular legislature will frequently seek to arrange a division that will work to its own selfish advantage. This practice is a very old one and not confined to congressional districts. The term itself is supposed to be derived from the fondness that Elbridge Gerry of Massachusetts had for such a device. An observer, who was asked whether he did not think a map of Massachusetts showing the boundaries of the districts suggested a salamander, quickly replied that he saw there a "gerrymander" and the designation has been commonly used since. Many people have the impression that the purpose of the gerrymander is simply to secure for the dominant party the majority of the seats in a congressional delegation or in a state legislature. Actually the purpose goes beyond that point, for a leading party except in very uncommon circumstances would have a majority of the seats by any arrangement. Under the gerrymander the party in power gets not only the larger part of the seats but a lion's share.

How Gerrymandering Works If the population of a state were uniformly divided in every nook and corner in party affiliation, it would be impossible, indeed unnecessary, to devise any system of districts which would confer undue advantage. As a matter of fact, under a uniform distribution of 1,310,000 Democrats and 1,305,000 Republicans throughout a state, the Democrats would elect all of the Representatives. What happens in many states, however, is that there are Republican islands in a Democratic state or vice versa. Perhaps the cities will be Democratic, but the rural areas will be Republican. Under an equitable arrangement, both parties would share the seats, with the dominant party winning the larger number. But the latter wants more seats than would be forthcoming under such a scheme; consequently it seeks to put the minority strongholds together into as few districts as possible.

The Contiguous Territory Requirement For many years before 1929 the national reapportionment acts stipulated that all districts must be made up of contiguous territory—this provision resulted in the most bizarre-shaped districts, for the minority strongholds had to be joined together by narrow strips of territory. Either intentionally or unintentionally Congress omitted the contiguous requirement from the 1929 act and the Supreme Court later held that Mississippi could therefore set up seven districts, each made up

of pieces of territory which were not joined together even by "shoestrings." [14]

Congressional Elections Members of the House of Representatives are chosen at general elections which are also used for the selection of state and local officers. Consequently the details regulating these elections are adopted by the forty-eight states and hence vary from state to state. Nevertheless, Congress has taken some advantage of its constitutional right to legislate as to the "times, places, and manner" of holding these elections.[15] Since 1872 it has required that Representatives shall be selected through the use of secret ballots; the following year it added a stipulation fixing the first Tuesday after the first Monday in November of even years as a uniform election day in all of the states with the exception of Maine. Under a ruling of the Supreme Court in the Newberry case [16] Congress had no right to lay down any rules in regard to the nomination of Representatives, for that was reserved to the domain of the states, but in 1941 the Supreme Court reversed this stand and paved the way for congressional action.[17] Federal regulations restrict the total campaign expenditures, exclusive of personal expenses, to a maximum of $5,000. Finally, Congress has made corruption on the part of election officials a federal offense, punishable by fines or imprisonment, even though the election officials are state appointed and compensated.

Disputed Elections Occasionally there will be some uncertainty as to who has been the victor in a congressional race. The voting may be so close that a change in a handful of votes would affect the results. Or it may be alleged that wholesale frauds have made an honest election impossible or switched enough bona fide ballots to transform a defeated machine candidate into an apparent victor. The Constitution provides that "Each house shall be the judge of the elections, returns, and qualifications of its own members." [18] The House makes the local election officials responsible for ordinary recounts of the ballots and stipulates that a candidate who believes that he has been elected despite the official returns

[14] See *Woods* v. *United States*, 287 U. S. 1 (1932).
[15] Art. I, sec. 4.
[16] See *Newberry* v. *United States*, 256 U. S. 232 (1924). This was a five-to-four decision.
[17] See *United States* v. *Patrick B. Classic* et al., 85 L. Ed. 867 (1941).
[18] Art. I, sec. 5.

shall exhaust the immediate remedy before bringing his case to Washington. When there is some question as to who has been elected, the House sometimes permits the apparent winner to take his seat, pending further action. Again the evidence pointing to fraud will be so glaring that neither claimant will be seated until it has been decided what final action to take.

Term of Office Representatives must stand before the voters every two years. It was the hope and intention of the forefathers that frequent elections would keep the congressmen closely in touch with public sentiment and thus lead to more representative government. Doubtless the short terms do have some effect of that kind. On the other hand, two-year terms oblige the Representatives to spend an inordinate amount of their time and energy building up political fences and campaigning for re-election. If a district customarily swings from one party to the other, a Representative may know that it will require his most skillful efforts if victory is to be won at the next election. Consequently he may start at once after he takes his seat in Congress to lay plans for the primary election, which in some states is scheduled slightly more than a year after he goes to Washington.

Results of the Two-year Term Except where members virtually "own" their districts, there is a premium placed upon personal service by the short terms. There is not too long a time available in which to demonstrate one's effectiveness as a Representative—nothing like the six years permitted a Senator—so one must bend every effort to get jobs, contracts, and all sorts of personal favors for individuals, firms, and associations at home. This all requires time and energy, even with an efficient secretarial staff. It should be obvious that most efforts of this character detract from the attention which a Representative can give to pending legislation. Especially where there exists a tradition of "passing around" the salary and perquisites that seem so handsome to the residents of many districts, the two-year term contributes to the lack of familiarity with the procedure frequently observed among newcomers to the House. The people at home do not realize that it requires from four to six years at least to become reasonably acquainted with the "ropes"—they think only how nice it would be to have the salary attached.

Finally, the two-year terms play a part in bringing about dead-

locks in which the President is on one side of the political fence and Congress is on the other. The voters rarely elect a President of one party and at the same time send to Washington Representatives of another. But in the off-year elections, when a President is not elected, they may imagine it desirable to change the local congressman. So enough opposition congressmen are elected to swing the balance of power to the party which has been in the minority, while the executive branch remains in the hands of the formerly dominant party. This was the situation during the last two years of both the Wilson and Hoover administrations. Needless to say, it made for division, delay, and deadlock. A four-year term for Representatives, coinciding with that of the President, would go far to prevent some of these faults, although it might result in a House less closely in contact with the rank and file of the people.

Salary and Perquisites The salary of Senators and Representatives is fixed at a uniform rate by their own action. Until just before the Civil War they drew no regular salary but only a per diem allowance, for there was somewhat of the psychology still prevailing in England that considers legislative office a public service.[19] Starting out at $3,000 per year at that time, the remuneration has gone up by degrees, until in 1946 it reached $12,500 plus a tax-free expense allowance of $2,500. In addition, there are numerous perquisites which may in certain cases be used to implement the salaries. For example, travel allowance of 20 cents per mile on a round-trip basis is made. Secretarial assistance exceeding $10,000 per year is provided; some Representatives keep much of this in the family by hiring their wives and children as nominal secretaries. An administrative assistant who draws some $10,000 per year is authorized. Free telegraph and telephone service, though limited, are also very helpful, especially when Representatives live at a considerable distance from the national capital.

The Franking and Other Privileges Likewise, the franking privilege permits Representatives to send their official mail without the payment of postage. Some congressmen abuse the franking privilege so greatly that they have been accused of turning it over to pressure groups—thus making it possible for the latter to flood

[19] Members of the House of Commons receive the equivalent of about $4,000 per year as an allowance but almost no perquisites. Members of the House of Lords are not paid at all.

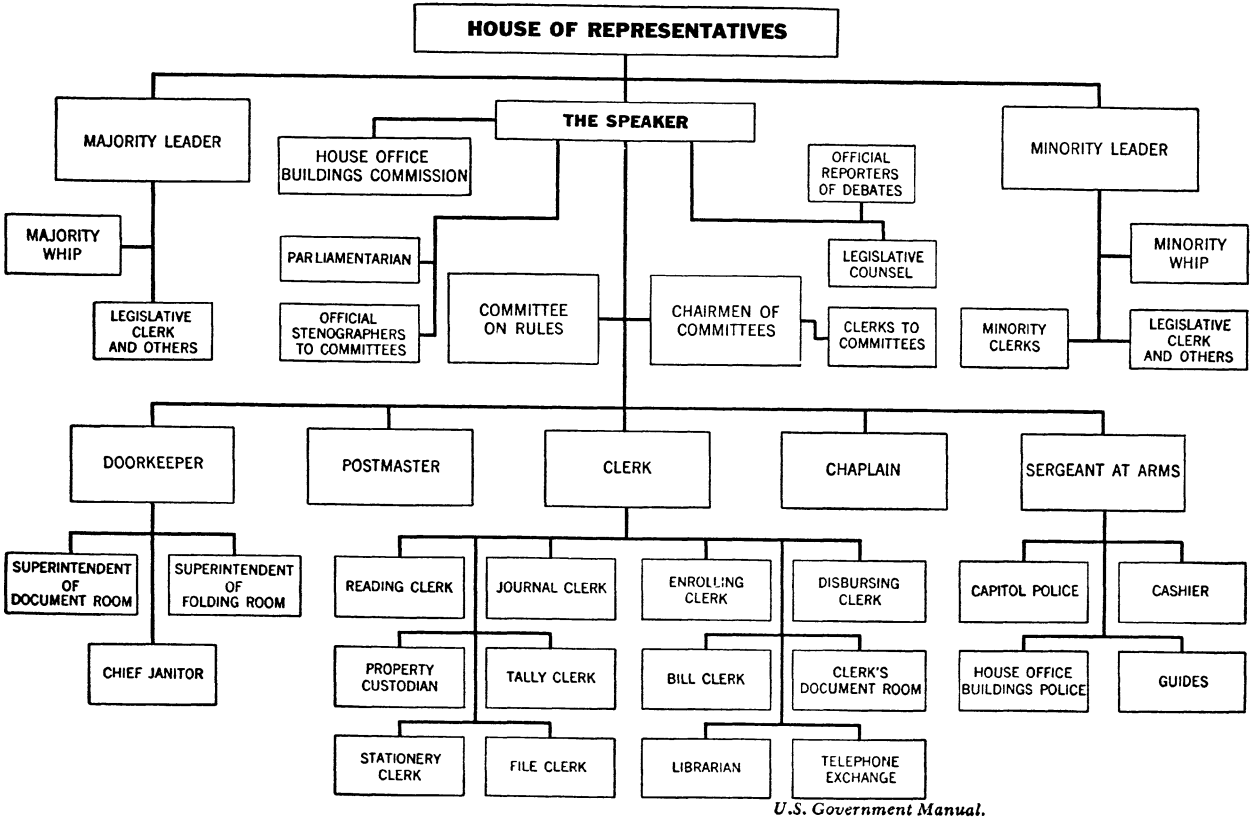
the country with hundreds of thousands of propaganda pamphlets without the heavy expense of postage. An allowance is made for stationery, which may be collected in cash when it is not used up in office supplies. Finally, Representatives not infrequently see the world at government expense under the guise of investigating committees.

Adequacy of Congressional Emoluments The initial salary paid Representatives seems munificent to the rank and file of the citizens, but expenses in Washington are high. Something can at times be saved on the travel allowance, even after families have been transported. In comparison with the members of most other legislative bodies, our Representatives are handsomely treated—indeed in general they deal with themselves the most generously of any legislators throughout the world. Nevertheless, their personal and election expenses are high; they work hard as a rule; and they contribute to the welfare of the country.

Privileges and Immunities of Members Representatives have no criminal immunity of importance, since they are liable to arrest for treason, felonies, and breaking the peace. On the other hand, their immunity in civil cases is fairly broad. They cannot be arrested coming to, attending, or going from a session of Congress in connection with civil matters, nor can they be subpoenaed as witnesses in civil cases. They cannot be held liable in court for what they say on the floor of the House, although the House itself may strike out of the record what they say, censure them for improper speech, or even in extreme cases deprive them of their seats. A few Representatives take advantage of their freedom of speech and make sensational and unfounded charges against citizens or business organizations, which, of course, have no remedy. The House is reluctant to take any action in these instances, at least beyond a mild reproof.

ORGANIZATION OF THE HOUSE

Inasmuch as all the Representatives are elected for two-year terms which begin and end at the same time, it is necessary for the House of Representatives to organize every other year. Actually there is less change than might be supposed, for the body of rules that has been developing for well over a century continues in effect



U.S. Government Manual.

except for occasional modifications; the officers usually remain the same unless there has been a shift in parties or death has caused vacancies; and enough of the leaders are usually re-elected to enable the committee system to continue with minor replacements.[20]

Sessions For many years the House of Representatives convened every year in December. In the even years a so-called "short" session was begun which had to terminate not later than the fourth day of the following March, while in the odd years a "long" session started out to continue until late spring, summer, or even fall, depending upon the pressure of business. The first of these sessions was characterized as a "lame-duck" session because some of the members who sat had already been notified by the voters at the November elections that their office-holding would not be continued. The Representatives-elect who had been named to succeed them would, under this old arrangement, not actually sit for approximately thirteen months after election. It was obviously not particularly rational to have defeated Representatives make laws and vote appropriations while the Representatives-elect were cooling their heels. The Twentieth Amendment took cognizance of the evils inherent in this situation by fixing January 3 of the odd years as the date when the new terms should begin and by specifying that the House of Representatives should assemble on that date unless other provision were made by law.

Length of Sessions Since the adoption of the Twentieth Amendment, there has been no reason for short and long sessions and hence no distinction is now made on this basis. The session held in the even years at four-year intervals is practically somewhat more limited than the odd-year sessions because of the national party conventions; while those scheduled for the in-between even years are likely to be cut short by the preparations which Representatives must make for re-election. In times of national emergency the House may not get through until just before Christmas,[21] thus

[20] The proportion of new Representatives varies from time to time. The turnover during the period 1790-1924 averaged 44 per cent every two years. See *American Political Science Review*, Vol. XXVIII, pp. 632-642, August, 1934.

[21] In 1945 it was late in December before adjournment took place. With a new session beginning early in January, the House was for all practical purposes in continuous session.

permitting only a brief breathing spell before the next session begins, but otherwise adjournment is some time between June and August. It is possible for executive (or secret) sessions to be held if the exigencies of the times demand, but with rare exceptions all sessions of the House are of public character.[22]

Preliminary Organization When the House of Representatives assembles early in January of the odd years, it must go through certain preliminaries before it can begin its routine duties. The clerk of the last House calls the roll of the members, prepared on the basis of the certificates of election which they present as evidence of their claim to a seat. A permanent set of officers is then formally chosen, although the actual choice has been made beforehand. In case there has been no overturn in party control, the officers of the former session are usually continued in office, unless retirements or resignations have made vacancies. In any event, the slate of officers —the Speaker, clerks, sergeant at arms, and so forth—has been prepared by the leaders of the majority party and ratified by the majority caucus before it is submitted to the House itself for formal acceptance.[23] The oath of office is administered to all members, whether they have served in the House before or not, en masse rather than individually because of the time element. The rules of the last session are adopted, subject to changes that may later seem desirable. Vacancies are filled in the committees as a result of party conferences. Having gone through these motions, the House, after conferring with the Senate, notifies the President that it is ready to receive any communication which he may desire to make to it. When the presidential message has been delivered in person or read by a clerk, the House is then ready to proceed with regular business.

Rules The rules of the House of Representatives have grown up over a lengthy period and are at present so complicated that they are quite confusing to laymen—and even to members of the House who have had only a term or two of service. Some of the rules have come down from the English Parliament and are hoary with age; others have been set by the Constitution itself. The House

[22] There is nothing in the Constitution to prevent secret sessions, but the House from the beginning has seldom resorted to them.

[23] The Speaker is first elected; then the other officers as a group.

itself has from time to time drawn up regulations which seemed wise; Speakers and chairmen of the committee of the whole have made numerous rulings on controversial questions. Finally, the House has adopted the *Manual of Parliamentary Practice*, drafted by Thomas Jefferson, to apply to those cases not otherwise provided for. The basic rules alone, leaving out the *Manual*, the constitutional provisions, and the rulings of Speakers and chairmen of the committee of the whole, run to more than two hundred printed pages. The rulings of Speakers and chairmen have been assembled in eleven printed volumes of large size.[24] It is no wonder that not even the Speaker himself, despite his lengthy service in the House, can always trust himself to declare what the rules are on a given point. Consequently the House employs two experts in parliamentary procedure, one of whom is invariably in attendance at the arm of the Speaker during sessions. Members gradually become acquainted with the fundamental rules and can make their influence felt, but it usually requires at least four years to acquire even reasonable familiarity.

The Purpose of Rules One may well inquire why the House of Representatives condemns itself to such a staggering burden of rules. Robert Luce, long a member of the House and a leading authority on legislative procedure, has stated that "Lawmakers must themselves be governed by law, else they would in confusion worse confounded come to grief."[25] Of course, everyone will readily agree that a certain number of rules are required in order to: (1) provide for the orderly conduct of business, (2) prevent undue haste in disposing of far-reaching measures, and (3) protect the rights of the minority party. But the question, on which there is some difference of opinion, is whether so many and such complicated rules are essential. In theory there is a great deal to be said against a system of rules which condemns numerous members to impotence because of unfamiliarity with them. Moreover, the amount of time consumed in carrying out the rules is a heavy drain. Mr. Luce, who was not given to exaggeration, believed that a revi-

[24] Eight of these volumes were prepared by Asher C. Hinds under the title *Parliamentary Precedents of the House of Representatives*, Government Printing Office, Washington, 1899. A supplement of three volumes was edited by Clarence Cannon and published in 1935.

[25] See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 1.

sion of the rules would permit the session to be "reduced in length one quarter, or a quarter more work could be turned out, and in either case the product would be better." [26]

Why the Rules Are Not Modified Proponents of the present cumbersome rules argue that the House of Representatives would scarcely be able to function at all were it not for the elaborate rules now governing. They admit that other legislative bodies get along on a distinctly less involved set of rules, but they maintain that these chambers are basically different from the American House of Representatives. In most national legislatures which have substantial responsibilities a definite system of leadership is provided to guide the work. Under our plan there is little or no provision for legislative leadership; the President is set off on his own pedestal; the cabinet advises the executive but has little to do with the legislative branch. In other words, it is asserted that the presidential type of government which we have adopted makes no formal provision for the leadership which is an essential feature of cabinet government. Yet we have a large lower chamber of 435 members which we saddle with a great deal of responsibility. The elaborate rules now effective tend to centralize control in the hands of a small group of Nestors who have been so long in the House of Representatives that they know the "ropes" and can surmount even the rule-created barriers. Thus, lacking a formal leadership, we achieve under the rules an informal leadership which, while by no means perfect, does make it possible to turn out work. Any attempt on the part of ordinary members to amend the rules in any particular is usually regarded with suspicion—practically all changes are recommended by the Committee on Rules which is carefully guarded by the handful of old-timers who are endowed with leadership. Hence, despite the dissatisfaction which is openly expressed by many members of the House, the old rules continue in force session after session.

Office of Speaker The American office of Speaker has its roots in the office carrying the same title in the English House of Commons. Nevertheless, there has been so much development since the transplantation that the two positions are now basically different. The English Speaker is in no sense of the word a "partisan," although he has ordinarily been active in politics prior to his eleva-

[26] *Ibid.*, pp. 19-20.

tion to that office. As Speaker he must deal impartially with the members of all political parties, recognizing those who want the floor, applying the rules, and guiding business without favor. Even when one party goes out of control and another comes in, the Speaker usually remains in office in England. In contrast, the Speaker of the House of Representatives is not only an active partisan, but he is the leader of the majority party. He uses his official position to advance the interests of his own party, although he may not be as open or as ruthless in his methods as was the case during the decades around the turn of the century when "Czar" Reed and "Uncle Joe" Cannon held the position. It would be unthinkable for an American Speaker to continue in office after his political party loses control of the House.[27]

The "Revolution" of 1910-1911 Prior to the "revolution" of 1910-1911 which was directed at the Speaker of the House, the holder of that office could almost claim to be monarch of all he surveyed. Indeed his authority was so extensive that one well-known speaker was dubbed "czar."[28] The autocratic regime which he guided was naturally resented not only by members of the minority party, who found themselves almost helpless, but even by the more independent and liberal members of the majority party. The Speaker would recognize only those members who conferred with him beforehand and convinced him that their views were sound. Committee appointments which he dispensed went to those who could be depended upon to follow his wishes. The Rules Committee, of which he was chairman, would give a place on the order of business only to those measures which the Speaker desired enacted and would bring in amendments to the rules only in so far as they were approved by that worthy. In 1910 insurgent Republicans joined forces with a powerful Democratic minority to take away the position of the Speaker on the Committee of Rules. Speaker Cannon resorted to every tactic he knew to stave off the storm, but his opponents refused to be beaten down and they finally triumphed. The following year, having tasted blood, the "revolutionists" pro-

[27] On the office of Speaker, see M. P. Follett, *The Speaker of the House of Representatives*, Longmans, Green & Company, New York, 1904; and C. W. Chiu, *The Speakers of the House of Representatives Since 1896*, Columbia University Press, New York, 1928.

[28] Thomas B. Reed was frequently referred to as "Czar" Reed.

ceeded to take away the power of the Speaker to name members of standing committees.[29]

Present Functions of the Speaker At present the Speaker exercises two principal formal functions: (1) the power to recognize, and (2) the power to apply the rules. In addition, he is also the leader of the majority party and as such occupies a very prominent place in the councils of that party as they relate to the conduct of the House of Representatives. In order to speak, make motions, or offer amendments, Representatives must secure the floor and that requires recognition by the Speaker. Although the rules of the House make some stipulations as to who shall be given the floor, even so a considerable amount of leeway remains to the Speaker. If he is favorably disposed toward a Representative, it is probable that recognition will be readily accorded, while if he is hostile the member may find it difficult to obtain the floor at all. In extending recognition the Speaker, of course, favors his own party.[30]

Although no longer chairman or even a member of the Committee on Rules, the Speaker applies the great accumulation of rules already established. If there is any doubt as to what a rule requires, the Speaker has the authority to interpret. Thus, Speaker Reed ruled that in determining whether or not a quorum was present not only those who answered the roll call but those physically present in the chamber might be counted. There was violent objection at the time by minority members who sought to keep the House from transacting business by preventing a quorum, but it has for long years been regarded as a sensible interpretation with a beneficial effect. A majority of the House of Representatives may overrule the interpretation placed on a rule by the Speaker, but it rarely exercises that prerogative.

As leader of the dominant party the Speaker confers at frequent intervals with the little group which has so much to say about what shall be done in the House. He is, of course, active in the party caucus. Not infrequently he is called to the White House to go

[29] A detailed account of the "revolution" may be found in C. R. Atkinson, *The Committee on Rules and the Overthrow of Speaker Cannon*, author, New York, 1911.

[30] However, Speakers may also try to be fair to the minority-party claims. Nicholas Longworth was praised by the Democratic opposition for his fairness.

over legislative matters with the President. Finally, the Speaker has the right to refer bills to committees—a power which in the past has sometimes been distinctly important, but at present the great majority of bills are more or less automatically sent to committees by the clerk on the basis of their subject matter. Occasionally when there is a question as to what committee shall receive a certain bill, the Speaker still decides.

Other House Officers The Speaker is the only official of the House of Representatives who is a member of that body, but there is quite a retinue of salaried persons. The two parliamentarians have already been mentioned. The principal clerk of the House is assisted by a battery of reading, copying, journal, file, and engrossing clerks, who perform the functions which their titles suggest. Inasmuch as the House opens its sessions with prayers, it is necessary to employ a chaplain or chaplains who have the ability to deliver prayers that are neither too long nor too pointed, but withal sonorous and full of dignity. Sergeants at arms and doorkeepers see that the doors leading into the House chamber are guarded, maintain order on the floor when members forget their legislative dignity and seem to be headed toward fistic encounters, disburse the stationery and incidental money, and attend to the general comfort and convenience of the members. The former are charged with the task of serving subpoenas on witnesses for committees, and on occasion they may be ordered by the Speaker to round up enough absent members to secure a quorum for business. Pages are employed to carry messages, take amendments to the clerk's desk, and run errands within the immediate confines of the Capitol. Cooks, barbers, waitresses, cashiers, manicurists, mineral-water dispensers, stenographers, shorthand experts, librarians, bill drafters, elevator operators, janitors, and watchmen are included in the list of those directly or indirectly employed by the House of Representatives.

THE COMMITTEE SYSTEM

Importance of Committees The House of Representatives has long been so unwieldy in size and organization that much of its work is performed by committees rather than on the floor. Visitors to Washington frequently are greatly disappointed at what they see in a formal session. To begin with, the attendance may be

small; the debate is often dreary and uninspired; the matter under consideration may seem trivial. On this basis they conclude that the House of Representatives is a very unimpressive body, especially for a country as varied in character as the United States. At times the House conveys a very different impression, for there will be an excellent attendance, vigorous debate, and consideration of important problems, but such occasions are probably the exception rather than the rule. There are several reasons for the routine character of numerous sessions—one of the most important is the fact that preliminary work is done by a committee before the bill ever reaches the floor of the House.

Types of Committees The House maintains several types of committees: the committee of the whole, standing committees, conference committees, special committees, and joint committees. All of these have their uses and may be of considerable importance, but the one which overshadows all the others is the standing committee. Indeed when the term "committee" is used, most people will probably more or less automatically think of a standing committee.

Committee of the Whole A great deal of the business of the House is transacted by the committee of the whole.[31] This committee is to be distinguished from the House itself only with some difficulty. It meets in the same chamber, has the same members, and goes through some of the same motions, but it is presided over by a chairman other than the Speaker, uses much less burdensome rules than the House, and is particularly advantageous because it expedites matters. The quorum of the committee of the whole is 100 instead of 218. Debate is limited to five or ten minutes in the case of a single person on one bill, whereas in the formal sessions of the House an hour is permitted. So the House meets as a committee of the whole to carry on most of its debates and to consider amendments to pending bills; then it adjourns to meet as a House to pass the bill. One of the greatest advantages of the committee of the whole is that the time-consuming roll-call vote is not used.

Conference, Special, and Joint Committees When the two houses of Congress are unable to agree on the details of a bill, al-

[31] There are really two committees of the whole: the Committee of the Whole House and the Committee of the Whole House on the State of the Union. The former considers private bills and the latter public bills. For all practical purposes these committees are the same, made up as they are of all members of the House.

though they favor its general character, it is the practice to set up conference committees to iron out the differences. The composition and work of these committees will be considered in greater detail at a later point,[32] so that it is sufficient to mention them here. Special committees are appointed to handle matters which are not recurring in nature and are discharged when they complete their assignment.[33] Special committees may be appointed for such purposes as to attend the funeral of a colleague or to investigate subversive activities by radicals. Joint Committees on Internal Revenue Taxation, Nonessential Expenditures, and Organization of Congress may be cited as significant examples of joint committees.

Standing Committees For some years prior to 1927 the House maintained sixty-one standing committees; many of these actually had little or nothing to do and hence it was decided to reduce the number. Forty-eight standing committees were provided for in 1946 when the reorganization measure cut the number drastically to eighteen. There is a striking divergence among these committees as to amount of work, size, and general importance. Membership on the committees on Ways and Means and Appropriations is particularly prized, for these bodies have prestige, carry on a tradition of able chairmen, and receive bills concerning taxes and expenditures. Other outstanding committees are as follows: Judiciary, Interstate and Foreign Commerce, Banking and Currency, Agriculture, Education and Labor, Armed Services, and Rules. Other committees, such as Foreign Affairs and Affairs of the District of Columbia, may be quite important at times, but they are not regularly placed on the same plane as those named above.[34]

Size of Standing Committees There is no uniform size of standing committees, although a number of them have twenty-one or twenty-five members. The largest committee is that on appropriations, which in 1947 had forty-three members and is so elaborately organized internally that it is almost a system of committees in itself. The smallest committee has only nine members.[35] There is some relationship between size and importance, but the correlation is not entirely dependable. The Ways and Means Committee is usually

[32] See Chap. 19.

[33] The House of Representatives had six of these special committees in 1945.

[34] A complete list of the House committees may be conveniently found in the *Congressional Directory*, which also lists members of each committee.

[35] The Committee on Un-American Activities.

considered to have a slight edge over any other committee, although smaller in membership than the Committee on Appropriations. The highly important Rules Committee has only a dozen members in contrast to the twenty-one or more of some of the second-rate ones. Membership is divided between the majority and minority parties on the basis of a gentlemen's agreement arrived at by the leaders of the two parties, depending in general upon the respective strengths of the parties in the House of Representatives. It may be added that the majority party is careful to preserve a definite margin of safety, even when the minority party is almost as numerous.[36] A committee of twenty-five might be apportioned fourteen majority members and eleven minority members, but it is more likely that there will be a division of fifteen and ten or even sixteen and nine.

Committee Appointments Since the Speaker was dispossessed of his power to name committee members, the House has formally elected these members, but the actual selection is made by the party organizations in the House. Democratic assignments are made by the Democratic members of the Ways and Means Committee upon consultation with various leaders, after the Democratic caucus has named its representatives on the Ways and Means Committee. The Republican caucus has a Committee of Selection which undertakes the rather trying task of distributing the seats allotted to the Republicans. Selecting committee members may carry with it some prestige, but it is a thankless job, for everyone wants to be on the most important committees and few are keen about the minor ones. The job would be harder than it actually is were all committee assignments to be shuffled every two years. As it is, Representatives may remain on the same committee year after year, until perhaps eventually they become either the chairman or the ranking minority member. This means that unless there has been a shift in party control the work of the committees on Committees is mainly that of filling vacancies.[37]

Committee Chairmen During the days when the House was less democratic than it is at present, committee chairmen some-

[36] In 1947 the Republicans had twenty-five members of the Appropriations Committee and the Democrats eighteen.

[37] This does not mean that members who have served a term or so may not be promoted by being shifted from a less important to a more important committee.

times took upon themselves the responsibility of the entire committee. They decided what they wanted to do about a certain bill and then, just before a report had to be made to the House, they notified the members of the committee what was expected. Minority Representatives might not even be accorded this courtesy. At present it would require a bold chairman to attempt such a course. Chairmanships are still highly prized and eagerly sought, but the members, particularly the majority members, also expect to be consulted. Chairmen are always members of the majority party; more than that, they are members of that party who have served long in the House. It might be supposed that the most informed and competent Representatives among experienced members would be made chairmen, particularly of the most important committees, but this is not the case. There is but one rule which in the last analysis controls the selection among the members of the party in power and that is seniority. There may be in the House a member who belongs to the majority party, has served that party loyally in the House for many years, and who has excellent knowledge in a field related to that of a committee. Yet unless this man outranks everyone else who might want the vacant chairmanship, there is very little prospect of his getting the office. This means that comparatively unknown Representatives sometimes find themselves shot by their seniority into the most influential posts, while more competent and equally experienced ones who have had shorter terms have to take the minor leavings. It is true that most chairmen are taken from the ranks of the committee itself and that this serves at least to give an apprenticeship to mediocrity. More than that, it is argued in its favor that seniority prevents intrigue and manipulation. Finally, it must be admitted that even under seniority a good many chairmen have been distinctly able men.[38] Nevertheless, the Joint Committee on the Organization of Congress in 1946 recommended that standing committee chairmen be limited to a tenure of six years, and while this was not accepted by Congress, there is an increasing sentiment in favor of some change in the system.

[38] For a persuasive defense of the seniority system, see James K. Pollock, "The Seniority Rule in Congress," *North American Review*, Vol. CCXXII, pp. 235-245, December, 1925-February, 1926.

Selected Bibliography

Alexander, D. S., *History and Procedure of the House of Representatives,* Houghton Mifflin Company, Boston, 1916.

Brown, G. R., *The Leadership of Congress,* The Bobbs-Merrill Company, Indianapolis, 1922.

Busbey, L. W., *Uncle Joe Cannon,* Henry Holt & Company, New York, 1927.

Chiu, C. W., *The Speakers of the House of Representatives Since 1896,* Columbia University Press, New York, 1928.

Follett, M. P., *The Speaker of the House of Representatives,* Longmans, Green & Company, New York, 1904.

Fuller, H. B., *The Speakers of the House,* Little, Brown & Company, Boston, 1909.

Griffith, E. C., *The Rise and Development of the Gerrymander,* Scott, Foresman & Company, Chicago, 1907.

Hasbrouck, P. D., *Party Government in the House of Representatives,* The Macmillan Company, New York, 1927.

Luce, R., *Legislative Procedure,* Houghton Mifflin Company, Boston, 1922.

——, *Legislative Assemblies,* Houghton Mifflin Company, Boston, 1924.

——, *Legislative Principles,* Houghton Mifflin Company, Boston, 1930.

——, *Legislative Problems,* Houghton Mifflin Company, Boston, 1935.

Remick, H. C., *The Powers of Congress in Respect to Membership and Elections,* Princeton University Press, Princeton, 1929.

Robinson, W. A., *Thomas B. Reed, Parliamentarian,* Dodd, Mead & Company, New York, 1930.

Schmeckebier, L. F., *Congressional Apportionment,* Brookings Institution, Washington, 1941.

Torrey, V., *You and Your Congress,* William Morrow & Company, New York, 1944.

Voorhis, Jerry, *Confessions of a Congressman,* Doubleday and Company, New York, 1947.

Willoughby, W. F., *Principles of Legislative Organization and Administration,* Brookings Institution, Washington, 1934.

Young, R. A., *This Is Congress,* rev. ed., Alfred A. Knopf, New York, 1946.

17. *The Senate*

The upper chambers of national legislative bodies are frequently identified more with honor than with authority. The Senate and the House of Representatives are sufficiently different at present to make it somewhat difficult to compare their authority, but few would dispute the very great influence of the Senate in national affairs. All in all, it may be said that the American Senate is today the most powerful upper legislative body in the world.

MEMBERSHIP IN THE SENATE

Size In comparison with the House of Representatives the Senate is a reasonably small body of ninety-six members. It started out with scarcely more than one fourth that number and as new states have been created has added to its membership, until for approximately three decades now it has remained at its present size. Whether the future will see an enlargement depends upon the admission of Hawaii and Alaska and the approval of representation to the District of Columbia. A body of almost one hundred is perhaps too large for deliberative purposes unless definite leadership is provided. Nevertheless, in comparison with the House of Representatives and indeed most other national second chambers, the Senate is distinctly limited in membership.[1]

Equality of Representation It is not possible to overemphasize the importance of the equal state representation in the Senate. Not only is the size determined on the basis of states rather than population, but the very psychology manifested by the Senators is accounted for to a large extent by this equality of representa-

[1] The English House of Lords has more than seven hundred members; the Senate of the Third Republic in France had more than three hundred members.

tion. The principle of federalism may be dead or dying in the allocation of power between the state and national governments (as some observers have maintained at length), but the provision for equal representation which was deduced from it is still a very real and living force in determining the attitude and conduct of the United States Senate. Perhaps it is somewhat of an exaggeration to speak of the assembled Senators as an aggregation of kings, but it is not stretching the truth too much to suggest that they are at least a group of ambassadors.[2] The very manner of address suggests the diplomatic corps; they are not referred to as Senator Brown and Senator Black, but as "the Senator from Texas" or "the Senator from Massachusetts," much as diplomatic representatives are announced as "the Ambassador of the United States" or "the Minister of Sweden." Moreover, they sometimes think of themselves as spokesmen for sovereign states rather than as representatives of relatively temporary districts or as lawmakers of the United States. Senators are very loathe to restrict even those of their number who prove public nuisances, consumers of vast amounts of time, or positive thorns in the flesh, largely perhaps because of this ambassadorial picture they hold of themselves. The Constitution itself recognizes the sacredness of the dogma of equal representation by qualifying the article dealing with amendments[3] thus: "No state, without its consent, shall be deprived of its equal suffrage in the Senate."

Criticisms of Equal Representation Despite the fact that equal representation is so basic a factor in the composition of behavior of the Senate, there has been a certain amount of criticism directed at it. States with only one fifth of the population are accorded more than one half of the Senators—and that in a government which prides itself on democratic equality in its foundations. Certainly if the states with few people "ganged up" against the thickly settled ones, there might be intolerable conflict and selfishness. Fortunately that happens so rarely that it scarcely constitutes any problem at all. Nevertheless, there is some substance to the complaint of New Yorkers that they contribute perhaps one third of federal taxes and yet have only two votes out of ninety-six in

[2] On this point, see the illuminating little book written by former Senator George Wharton Pepper, entitled *In the Senate,* University of Pennsylvania Press, Philadelphia, 1930.

[3] Article V.

the Senate in determining what those taxes shall be and how the money raised shall be spent.[4]

Election of Senators Prior to 1913 In keeping with their fondness for indirect rather than direct popular election, the men of 1787 ordained that Senators should be elected by the respective state legislatures. It was felt that the members of a legislature would be more capable than the people to pick the strongest available persons. For more than a century this method of selection was employed with varying results. Pennsylvania saw fit to keep one after another of its political bosses in Washington,[5] while other state legislatures found it difficult to agree on any candidate and sometimes were deadlocked for weeks and even months at a time. On the other hand, certain states sent exceedingly able "ambassadors" to the Senate.

Criticism of Legislative Selection During the closing years of the nineteenth century, public opinion became sufficiently aroused to cause the House of Representatives to pass several resolutions proposing an amendment substituting direct popular election for the older legislative method, but the Senate refused to concur. Not deterred, the states began to establish senatorial primaries which permitted the voters to designate their favorites and required state legislatures to ratify these popular choices.[6] By 1912 some twenty-nine states had joined the parade and managed to circumvent the formal machinery specified in the Constitution. In that year the Senate reluctantly admitted defeat in its efforts to stave off change and in 1913 the Seventeenth Amendment had received sufficient support to cause its promulgation.

Present Method of Electing Senators At present Senators are elected in every state by direct popular vote, although the nomination procedure is still lacking in uniformity. When it votes on general state officers, the electorate also expresses its sentiments in regard to a Senator—that is, if one of the seats of the state has

[4] Of course in the House of Representatives New York has members in proportion to its population and can exert considerable influence on tax measures.

[5] The Camerons, Quay, and Penrose held senatorial seats for something like half a century.

[6] Oregon and Nebraska specifically required a pledge from state legislators that they would elect the candidate favored by the popular vote. In 1908 in Oregon there occurred the remarkable circumstance of a Republican legislature electing a Democratic Senator.

been vacated or if a term has expired. Nominations are now ordinarily handled through direct primaries; but some of the states prefer the convention plan for this office, even though they may use direct primaries for other positions. Those who are permitted to vote for members of the "most numerous branch of the state legislature" must be given a voice in choosing Senators under the terms of the Seventeenth Amendment. Special elections are provided for filling unexpected vacancies caused by death or other circumstances, but legislatures may authorize the state governor to fill such vacancies by appointment.[7]

Evaluation of Popular Election Whether the new plan of electing Senators is more or less satisfactory than the former one, it is difficult to say. There is no conclusive indication that the puppets of bosses and corporations have been shut out by the direct-election method. Former Senator James E. Watson misses the great names that were associated with the Senate during the earlier era,[8] but distance may have thrown a rosy haze about the past. The names of Norris, Wagner, Morse, Fulbright, O'Mahoney, Elbert Thomas, George, Taft and Vandenberg do not strike one less forcefully than the names of the Senators who held office in the pre-Seventeenth Amendment era or even the pre-senatorial primary period. On the other hand, the Senate has not quickened its pace perceptibly with the new and supposedly more popular blood. There are still a few very weak Senators besides many of mediocre ability, but then that has always been the case.

Qualifications The Constitution stipulates that Senators shall be thirty years of age and nine years a citizen of the United States. And, of course, they must be inhabitants of the state which they represent. Holders of a civil office under the United States must surrender these positions if they wish to qualify as Senators. The qualifications probably strike the reader as very simple—as indeed they are. But it must not be supposed that custom has not added

[7] The majority of states empower their governors to fill vacancies by appointment, particularly if a general election is not far off. The governors of Kentucky and Texas have recently arranged to have themselves transferred to the Senate, surrendering, of course, their gubernatorial positions. The former had himself appointed, while the latter accomplished the same end by a special election. Even more recently the governor of South Carolina moved to the Senate to take the seat vacated by James F. Byrnes.

[8] See his *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

others which are distinctly more arduous. The average age of the Senators does not often drop much under fifty-five and may sometimes almost reach sixty. With few exceptions Senators are native-born citizens of the United States and have been associated with the states which elect them either all of their lives or at least the greater part of their mature years. The rule is that Senators must have served their political parties long and actively before being favored with support. Service in the lower house of Congress, in a state legislature, or in a state executive office is frequently in the background of senatorial candidates and probably is helpful if not absolutely necessary for election in most states. A reasonable financial backing, either provided by a personal fortune or well-to-do friends, is likewise essential in most cases, for primary and election costs are likely to be high, even if a candidate is well known and enjoys party backing.[9] Judging from the predominance of lawyers in the Senate, legal training is often regarded as a desirable, although scarcely an absolute qualification.[10]

The Senate the Judge of Qualifications The Constitution confers on the Senate the power to judge the qualifications of its members,[11] but the Senate chooses to exercise that authority, at least in more than a nominal fashion, only on rare occasions. In the 1920's great notoriety attended the attempts of Boss W. S. Vare of Pennsylvania and public-utility favorite Frank L. Smith [12] of Illinois to gain admission. Both had spent money lavishly during their campaigns and in both cases there was widespread criticism of the sources of substantial portions of those funds. Finally, in December, 1927, the Senate refused seats to both claimants. In general, however, it is the policy to concede to a state the right to send whom it pleases to the Senate.[13] This has resulted in some strange choices, but it is perhaps a sound rule.

[9] The maximum allowed for the final election is $25,000, but this does not include primary expenses or personal expenses. Expenditures exceeding $100,000 have not been uncommon.

[10] It is only fair to point out that many of the lawyers are not active in practice.

[11] Art. I, sec. 5.

[12] For a very good study of this case, see C. H. Wooddy, *The Case of Frank L. Smith; A Study in Representative Government*, University of Chicago Press, Chicago, 1931.

[13] Early in 1942 the Senate Committee on Privileges and Elections recommended that Senator Langer of North Dakota be unseated on the ground

Term of Office Senators are the envy of most elective public officers because they need face the voters only every six years. Representatives must fight for their offices three times to the Senators' one, while even the President has to go through the rigors of a campaign every four years. Not only do Senators have long terms, but they are not all elected at the same time, for an overlapping plan was worked out in the Constitution which provided that only one third of their number should come up for election every two years. This, of course, makes for a continuity which is lacking in the House of Representatives. As a matter of fact, less than one third of the members are ever new because re-elections are commonplace.[14] Senators who have served two decades are not curiosities, while some Nestors can point to more than thirty years spent in that body.

Salary and Perquisites Although they spend more to get elected and although they occupy a higher social position in Washington, Senators receive exactly the same salary and tax-free expense allowance[15] which is paid in the House of Representatives. Their perquisites, however, are somewhat more liberal, for they are allowed approximately twice as much for secretarial and clerical hire. They have the same mileage allowance going to and from Washington; enjoy the same franking privilege;[16] and may make limited use of the telephone and telegraph lines at the expense of the Treasury. Their opportunities for junketing, however, are somewhat more frequent because of their smaller number.

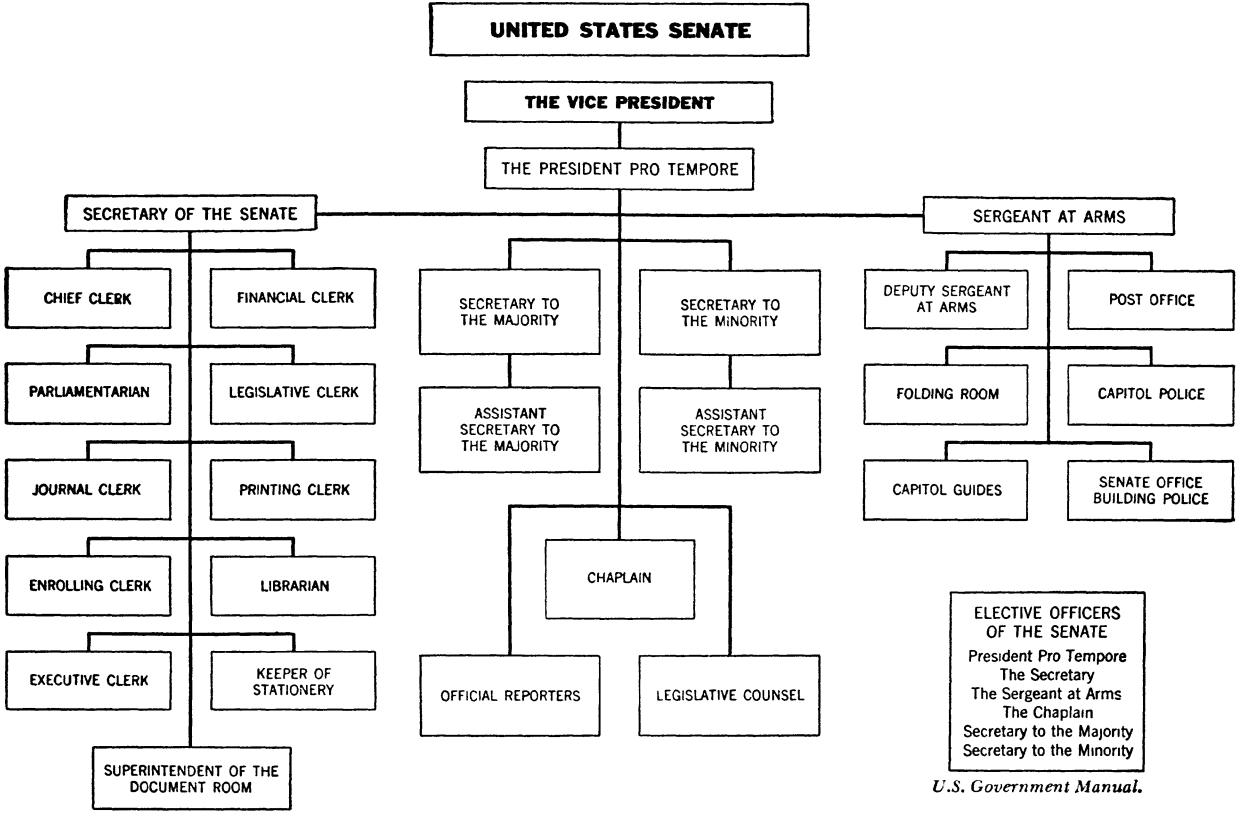
Privileges and Immunities of Members The privileges and

of his past record. Mr. Langer had been permitted to take a seat in the Senate in 1941 "without prejudice" to a later move to unseat him; consequently only a majority rather than a two-thirds vote was required for expulsion. However, when the case came up for a vote, the full Senate decided not to deny Senator William Langer a seat.

[14] See R. E. McClendon, "Re-election of Senators," *American Political Science Review*, Vol. XXVIII, pp. 636-642, August, 1934.

[15] The Senate refused to authorize a $2,500 tax-free expense allowance for its members in 1945, when the House inaugurated the plan. But in 1946 it agreed to this arrangement.

[16] And this is subject to the same abuses. Senator Burton Wheeler gave the America First Committee one million franked postcards to be used in carrying on their campaign against American participation in the European situation. It was alleged but not proved that ordinary correspondence of that committee was carried without postage during 1940-1941 because congressmen had furnished quantities of franked unaddressed envelopes.



U.S. Government Manual.

immunities of Senators are the same as those accorded Representatives, but it is probable that Senators make more use of them. The fact that for all practical purposes debate is unlimited in the Senate means that Senators are given to making statements which relate to almost every conceivable subject, irrespective of what bearing their words may have on the work of Congress.

ORGANIZATION OF THE SENATE

In its broad outlines the organization of the Senate resembles that of the House of Representatives, but it is clearly divergent in a number of particulars. Inasmuch as the Senate is compelled only to pause to take in a few new members every two years, there is no formal process of organizing at regular intervals. When one political party surrenders control to its rival, there will be a thorough house-cleaning of staff members and a reshuffling of committees; but in the absence of a political earthquake the Senate goes along year after year without attempting considerable changes at any one time. If a president *pro tempore* dies in the middle of a session, a successor is picked by the majority party to hold that position until the party loses control or until the Senator dies or goes out of office.[17]

Sessions The Senate ordinarily meets at the same time as the House of Representatives. Both formerly convened in December but now gather to begin a new session early in January. At times the Senate may need to meet more frequently than the House because it has presidential appointments to confirm and treaties to ratify, but the Constitution prescribes that "neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days."[18] Representatives of both houses confer on adjournments at holiday-time and at the end of the session in the summer or fall. Day-to-day adjournments are, however, decided independently, with the result that on any particular day when Congress is in session one house may be meeting and the other not. While the public is ordinarily admitted the

[17] Senator Pat Harrison died in the middle of the 1941 session, whereupon the Senate elected Carter Glass of Virginia as president *pro tempore*. Because of Senator Glass's illness Senator Kenneth McKellar of Tennessee was later chosen as president *pro tempore*.

[18] Art. I, sec. 5.

Senate occasionally sits in executive session to consider treaties, appointments, and related matters.

Rules The late President Coolidge is reported to have declared that the rules of the Senate could be adequately summarized in the following words: "The Senate does what it wants to when it wants to." As Vice-President, Thomas Jefferson prepared for the use of the Senate the *Manual*, which we have already referred to in connection with the rules of the House of Representatives.[19] While not all of the present rules by any means are to be found in this *Manual*, nevertheless it continues as the general basis for senatorial rules. Other formal rules have been adopted from time to time, although there is not the regular biennial acceptance of the rules of the previous Congress as in the case of the House. The rulings of the presiding officers have also been collected and serve a useful purpose in guiding the Senate today, but they are less bulky than those of the House.[20] In general, the Senate rules are distinctly less complicated than might be expected. The smaller size of the Senate permits an informality which could not well be associated with the larger House of Representatives. More than that the senatorial psychology stresses the role of the individual to a far greater extent than does that of the House. The Senate may groan under the never-ending speeches of some verbose colleague and it may chafe under the dilatory tactics of an obstructionist, but it never comes to the point, long ago reached by the House of Representatives, at which it feels compelled to adopt rules restrictive enough to render those practices impossible.[21]

Proposals to Revise the Rules Many informed persons are of the opinion that the rules of the Senate are not suited to this modern day when there is much business to be transacted and the time element may be of first-rate importance. Vice-President Dawes arrived at this conclusion when he presided over the Senate in the late twenties, but in the end Mr. Dawes emerged battered and bruised from the fray and the Senate went tranquilly on its way with the same old rules. Individual Senators will admit that the be-

[19] See Chap. 16.

[20] The rules of the Senate are conveniently gathered together in *Senate Manual Containing Standing Rules and Orders of the Senate, Senate Document 258*, Seventy-fourth Congress, second session, Government Printing Office, Washington, 1936.

[21] For the Senate cloture rule of 1917, see Chap. 19.

havior of the more extreme of their colleagues leaves much to be desired; however, they insist that a large measure of freedom is essential to a body which desires to remain as independent as does the Senate. The price that would be required to ban filibustering and other obnoxious practices would, they maintain, be too high.

Presiding Officers The Vice-President of the United States is assigned the task of presiding over the sessions of the Senate. Some Vice-presidents have displayed considerable interest in this duty and have given it the best of their talents, with the result that they have at times exercised far-reaching influence on the general business of the Senate.[22] Others have regarded the duties of a presiding officer as beneath their dignity or at least as outside their main circle of interests. The truth is that not everyone is fitted to act as presiding officer of a body such as the Senate. An impatient-executive type of man would be driven to distraction by the endless talk on issues that are often beside the point. A good presiding officer for Senate purposes needs to be composed himself, wedded to dignity, tolerant of wordiness and obstinacy, and indeed an excellent judge of human nature.

Inasmuch as the Vice-President is not always present at meetings, the Senate chooses a president *pro tempore* to act as a substitute.[23] This person, nominally elected by the Senate itself but actually the choice of the majority caucus, is, like the Speaker of the House, the ranking member of the dominant party. The extent to which he presides is, of course, determined by the regularity with which the Vice-President assumes this function. But even if he does not preside over the Senate a great deal of the time, the president *pro tempore* is likely to have a large measure of influence.

Other Officers In addition to its presiding officers, the Senate has a full complement of other staff members, which in general correspond to those of the House of Representatives. However, the Senate has a secretary instead of a clerk.

THE COMMITTEE SYSTEM

Committees are less important in the Senate than in the House of Representatives, although their role should not be minimized.

[22] Vice-President J. N. Garner supposedly exercised very great influence on Senate deliberations.

[23] He presides permanently if the Vice-President becomes President.

The smaller size of the Senate permits more of the business to be handled on the floor. The inclination of the Senators to disregard the recommendations of their committees at times does not make for the vigor to be observed in the committee system of the House.

Types of Committees The senatorial committees follow the same pattern that we have already noticed in the House, but there is one very important difference. Standing committees hold the main ring; conference committees are charged with ironing out differences with the House—and it may be added more often than not succeed in carrying the day; special committees are set up to look after nonrecurring matters.[24] But the committee of the whole, which occupies so prominent a place in the House of Representatives, is no longer in general use in the Senate—since 1930 it has, as a matter of fact, been employed only when treaties were under scrutiny.

Standing Committees The standing committees of the Senate literally go on forever, although they may be severely overhauled when there is a shift in party control.[25] But otherwise the majority of the committee members are never new, for only vacancies occasioned by death or retirement are filled from time to time. Prior to 1921 the Senate actually had more standing committees than the House of Representatives, but the artificiality of such an elaborate structure led to outspoken criticism and caused a reduction in numbers from seventy-four to thirty-four. Since that drastic pruning two decades ago, a further cut has been effected recently which brings the present number of standing committees to fifteen.[26]

Outstanding Senate Committees A half a dozen or so of the standing committees are important enough to be mentioned by name. The committees on Finance and Appropriations are always regarded as outstanding, although their preeminence is probably somewhat less noticeable than in the case of their counterparts in the House of Representatives: the committees on Ways and Means

[24] The Senate maintained eleven special committees in 1945, but this number was cut to two in 1947 under the reorganization effected in that year.

[25] On the place of committees in the Senate, see Robert Luce, *Legislature Procedure*, Houghton Mifflin Company, Boston, 1922, Chaps. 4-8; and J. P. Chamberlain, *Legislative Processes; National and State*, D. Appleton-Century Company, New York, 1936, Chap. 5.

[26] A list of these is conveniently available in the *Congressional Directory*.

and Appropriations. Money bills are peculiarly associated with the lower house—indeed the Constitution specifies that "All bills for raising revenue shall originate in the House of Representatives." [27] The Senate Committee on Finance does not hesitate to make changes in the bills which are drafted by the Committee on Ways and Means, but it lacks the creative vigor of the latter. The Committee on Judiciary is always surrounded with prestige. The Committee on Foreign Relations is distinctly more powerful than its counterpart in the lower house because of the special authority conferred on the Senate in the ratifying of treaties. The committees on Interstate and Foreign Commerce, Armed Services, and Banking and Currency deal with bills which are suggested by their titles and during recent years have been busy enough to deserve first rank.

Membership of Standing Committees Senatorial committees are somewhat smaller than House committees, although there is less difference than the sizes of the two bodies would indicate. The largest committee—Appropriations—has twenty-one members, while the others normally consist of thirteen Senators.[28] A gentleman's agreement is worked out to determine how many of the seats on each committee shall go to the majority party and how many to the minority party. The division varies from time to time, depending upon the relative strength of the two parties, but one may be certain that the dominant party will have a substantial margin. Individual Senators may hold only one of the standing committee chairmanships and occupy seats on two of the committees, though prior to 1947 they sometimes served on five or six.

Committee Chairmen The chairmen of the standing committees vary somewhat in prestige and influence. The chairmanship of such committees as Appropriations, Judiciary, Finance, and Foreign Relations are especially prized. Not too long ago committee chairmen took upon themselves even more authority than they dare essay now—even to acting alone in the name of the entire committee.

Selection of Committee Members The Senate theoretically elects its own committees, but this is a mere formality, for actual

[27] Art. I, sec. 7.

[28] Prior to the 1947 reorganization, committees were somewhat larger. Foreign Relations, for example, had twenty-three members.

selections are made by the party organizations. Both of the major parties appoint committees on committees every two years which make recommendations to the party caucuses about filling vacancies which have occurred as a result of retirement or defeat at the polls. After the caucuses have passed on the assignments, the slates go to the Senate for formal approval. It should not, however, be supposed that the party organizations have too great leeway in deciding who shall receive the major assignments, for the seniority rule determines that. Even in those cases where it is clearly illogical to place Senators in chairmanships, seniority governs. Able men receive major appointments at times even under the seniority system and mediocre men may acquire reasonable competence as a result of experience.

Selected Bibliography

Chamberlain, J. P., *Legislative Processes; National and State*, D. Appleton-Century Company, New York, 1936.

Haynes, G. H., *The Senate of the United States*, 2 vols., Houghton Mifflin Company, Boston, 1938.

Kerr, C. H., *The Origin and Development of the United States Senate*, Cornell University Press, Ithaca, 1895.

LaFollette, R. M., *Autobiography*, rev. ed., LaFollette's Magazine, Madison, 1913.

Lief, Alfred, *Democracy's Norris*, Stackpole Sons, New York, 1939.

Luce, R., *Congress–An Explanation*, Harvard University Press, Cambridge, 1926.

——, *Legislative Assemblies*, Houghton Mifflin Company, Boston, 1924.

Pepper, G. W., *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930.

Remick, H. C., *The Powers of Congress in Respect to Membership and Elections*, Princeton University Press, Princeton, 1929.

Rogers, Lindsay, *The American Senate*, Alfred A. Knopf, New York, 1926.

Senate Manual Containing Standing Rules and Orders of the Senate, Senate Document 258, Seventy-fourth Congress, second session, Government Printing Office, Washington, 1936.

Watson, James E., *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

Willoughby, W. F., *Principles of Legislative Organization and Administration*, Brookings Institution, Washington, 1934.

Wooddy, C. H., *The Case of Frank L. Smith; A Study in Representative Government*, University of Chicago Press, Chicago, 1931.

Young, R. A., *This Is Congress*, Alfred A. Knopf, New York, 1943.

18 · *A General View of the Powers of Congress*

If the doctrine of separation of powers were strictly applied, Congress would exercise only legislative powers. No one can dispute the importance of lawmaking under the type of government which characterizes the United States, but it is not desirable to omit consideration of several other functions which are entrusted to one or both chambers of the legislative branch.

Duties in Connection with Changing the Constitution In some of the states which use the initiative, it is possible for the people to take steps which may eventually produce formal changes in the state constitutions.[1] But no provision is made for popular action leading toward amendment of the federal Constitution. Proposals to amend must be made by a two-thirds vote of Congress or by a national convention which Congress calls at the request of the legislatures of two thirds of the states. As we have noted in discussing the formal amending process,[2] only the congressional method has actually ever been invoked. In addition, Congress has far-reaching duties in connection with expanding and interpreting the original Constitution—thus making it one of the most potent factors in the developing of the broad constitutional system under which the United States currently operates.[3] Most of this is done through the passage of momentous statutes, although it is possible in certain instances to accomplish this end through the use of the treaty-making and other powers.

Electoral Duties Perhaps the very routineness of the duties of Congress in connection with the election of a President and a Vice-President blind one to their existence. No one can get very

[1] For a fuller discussion, see Chap. 32.
[2] See Chap. 3.
[3] See Chap. 3.

excited about the canvass which the two houses of Congress meeting together make of the electoral votes, for it has been known for some two months who the President and the Vice-President would be.[4] Nevertheless, if we should find ourselves with a party split, resulting in less than a majority of the electoral votes cast for a single candidate for the presidency or vice-presidency, the importance of the electoral functions of Congress would be emphasized. In this connection, it may be recalled that Congress also has the authority to legislate on "the times, places, and manner of holding elections for Senators and Representatives," [5] and that it judges the qualifications of its own members, including the validity of their elections.[6]

Administrative Functions The administrative agencies of the federal government are almost entirely the handiwork of Congress. Not a single one is provided for in any detail by the Constitution itself, and only the temporary or minor ones are the result of executive action. The form, the organization, and the powers to be exercised by administrative departments are all in most instances specified by act of Congress.[7] Moreover, the fuel that runs these agencies comes only from congressional drafts on the Treasury, for no money can be paid out by any department except on the authority of Congress.[8] The direction of the administrative services is primarily an executive function, but Congress from time to time sees fit to pass statutes requiring reports to be made directly to the legislative branch. Thus the Comptroller General has been made responsible to Congress rather than to the President. Resolutions are sometimes adopted which direct the administrative agencies to follow a certain course in a current situation. In so far as they encroach on the territory of the executive, these resolutions do not have the force of law, but merely indicate the opinion of the two houses of Congress as to what should be done. However, when it comes to the use of money, the authority of Congress may be more compelling. A considerable portion of the time and ener-

[4] See Chap. 12.

[5] See the Constitution, Art. I, sec. 4.

[6] *Ibid.*, Art. I, sec. 5.

[7] If Congress authorizes the President to handle organization, he may, of course, arrange such matters. Thus in 1939 President Franklin D. Roosevelt formed the Federal Security Agency out of existing agencies dealing with public welfare. In 1942 he "streamlined" the War Department after Congress had authorized reorganization to meet national defense requirements.

[8] See the Constitution, Art. I, sec. 9.

gies of both the Senate and the House of Representatives is directed at problems which are primarily administrative in character, although they may involve the passage of a law.

Investigatory Activities Both houses of Congress are rather fond of setting up investigating committees of one kind or another, even though these same congressmen may hurl taunts at similar bodies created by the President. Most of these committees carry on investigations that pertain immediately to the legislative process —the courts have ruled that there must always be some connection between their labors and the problem of making laws.[9] However, almost any subject under the sun has at least a remote relation to the legislative process and hence Congress has considerable leeway.[10] Recently some fifty special committees or subcommittees of standing committees were carrying on investigations of one kind or another.

APPOINTING POWER

The several hundred employees of the two houses of Congress are, of course, directly responsible to those bodies. The very large number of civil employees of the government are indirectly responsible to the legislative branch in that their positions are created by law, their salaries are paid out of funds appropriated by Congress, and in the case of the great majority their civil service status is the result of congressional action.[11]

Making of Appointments In relation to the fifteen thousand or so officials who are nominated by the President and confirmed by the Senate, the congressional role is especially outstanding. Theoretically, these appointments originate in the executive office, but, as we have previously noted, the vast majority of them really fall under the jurisdiction of members of Congress, especially Senators.[12] The President is far too busy to investigate the various claimants to most of the places. Senators who belong to the President's political party do not wait to be asked which candidate they

[9] *McGrain* v. *Daugherty*, 273 U. S. 135 (1927).

[10] An illuminating article on the use of these committees during the years 1933-1937 is M. N. McGeary's "Congressional Investigations during Franklin D. Roosevelt's First Term," *American Political Science Review*, Vol. XXXI, pp. 680-694, August, 1937.

[11] For a fuller discussion of this point, see Chaps. 13 and 22.

[12] See Chap. 13.

favor—they inform the executive office whom they desire and except in rare instances they get their way. If there are no Senators from a state of the same political party as the President, Representatives who claim that party may be permitted a similar privilege. Or even when there are party Senators, an agreement may be worked out under which the Senators share the patronage with the Representatives.

Confirmation of Appointments When the nominations reach the Senate from the office of the President, they are usually referred to an appropriate committee for investigation and recommendation. If a former Senator is being honored, this rule may be waived and immediate confirmation may be given by the Senate as a whole. It should be noted that there is no single committee on nominations in the Senate and that nominations consequently are distributed on the basis of nature of office. Thus, nominations for judicial posts go to the Committee on Judiciary; those involving seats on the Federal Trade Commission or Interstate Commerce Commission find their way to the Committee on Interstate Commerce; while positions as ambassador or minister must be considered by the Foreign Relations Committee. The attention given a nomination may be purely routine or it may occasion debate extending over weeks. Hearings may be held at which not only the person involved will be called upon to testify, but opponents and supporters may also be given a chance to air their views.

The recommendations of the committee to which a nomination is referred for report can, of course, be debated on the floor, but they are likely to be accepted, unless there has been a close split among the members of the committee. If a quorum is in attendance, confirmation requires only an ordinary majority vote. If the Senate adjourns without agreeing to an appointment, the position is vacated.

JUDICIAL FUNCTIONS

General Judicial Functions All of the courts below the Supreme Court have been created by Congress, while even though the highest tribunal is specified in the Constitution, Congress has provided for its composition, organization, and appellate jurisdiction. At one time Congress made the rules under which the courts operate and even now it has that authority, although it cur-

rently prefers to delegate that task to the courts themselves.[13] The money to run the courts is appropriated by Congress; the laws which they assist in enforcing are passed by Congress; and the judges who constitute their benches have to be confirmed by the Senate. Finally, Congress itself is charged with the direct exercise of judicial power in connection with the impeachment process.

Nature of Impeachment The impeachment of public officials has long been established in those countries which modeled their political institutions after those of England. It must not be confused with the ordinary procedure by which those accused of criminal offenses are tried. Although in many respects it resembles that procedure, it does not take its place; that is, impeachment does not prevent ordinary judicial trial on the same charges.

Who May Be Impeached The Constitution is not entirely clear as to what officers of the federal government are subject to impeachment. The Constitution merely reads that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."[14] Military and naval officers are obviously not included, being subject to court-martial. The question early arose as to whether "civil officers" is intended to include members of the legislative branch. While there may be some doubt still as to the exact status of congressmen in connection with impeachment charges, it was decided for all practical purposes in 1798 that members of Congress are not subject to the process.[15] In addition to the President and Vice-President, it is at present understood that cabinet members, federal judges, and other high administrative officials are subject to impeachment. Although lower officers might in theory be impeached, the fact that they can be removed from office and prosecuted in the regular courts would scarcely justify the use of the

[13] Two volumes of procedural rule were drafted by the courts in 1937 and published in the form of *United States Reports.*

[14] Art. II, sec. 4.

[15] In 1798 in the case of William Blount, a Senator from Tennessee, such a precedent was established. Blount, having been charged with conspiracy to provoke Louisiana and Florida to revolt against Spain and to turn themselves over to Great Britain, was then expelled from the Senate. When the House passed articles of impeachment, the Senate refused to try Blount on the ground that, having expelled him, it no longer had jurisdiction.

cumbersome impeachment machinery. The United States has been relatively fortunate in its experience with its public officers—only a dozen cases of impeachment have been necessary in more than a century and a half and of those no more than four have resulted in conviction.

Basis of Impeachment The Constitution is clear enough when it sets down treason and bribery as the basis for impeachment; it is not so clear when it adds "other high crimes and misdemeanors." In general, it is understood that only serious offenses of a criminal nature can be made the basis of impeachment proceedings. But what of the recent case in which the Senate found Judge Ritter not guilty on eight specific charges involving splitting of bankruptcy fees, the acceptance of free accommodations from bankrupt hotels in Florida, and so forth, and then convicted him on a final omnibus charge which detailed the earlier counts and alleged that his conduct had been unbecoming to the bench? Judge Ritter attempted to have the Supreme Court intervene on his behalf on the ground that conduct unbecoming a judge was not a valid charge on which to base articles of impeachment, but he was refused a hearing. It would appear, then, that the earlier concept of an adequate basis has been somewhat expanded during the last two decades.

Steps in Impeachment Proceedings The House of Representatives is given the first responsibility for impeachment proceedings, for charges must be brought on its floor and articles of impeachment must be voted by it before a trial can be conducted in the Senate. Notwithstanding the very small number of impeachment cases, it is not at all uncommon for Representatives to make charges against judges and administrative officials from the floor of the House. Indeed crackpot members have been known to press charges against the same official repeatedly. If the House decides the charges are worthy of investigation, it sets up a special committee to consider the case and make a report. This report is read in the House, discussed, and if adopted by a majority, results in voting of articles of impeachment which specify the charges against the accused. These articles are sent to the Senate, which is in turn obliged to fix a date for itself to sit as a court to examine charges. Ordinarily several weeks or months are permitted to intervene be-

fore the trial is begun, which gives the accused and the managers appointed by the House to be prosecutors an opportunity to prepare their arguments and evidence. Furthermore, it saves many trials, for most of those who see ruin staring them in the face resign after articles of impeachment have been voted.

If the accused does not resign, the Senate at the date fixed starts to hear the case. The presiding officer of the Senate acts as judge, but if the President is being tried, the Chief Justice of the United States occupies the chair. Senators take an oath to give due consideration to the evidence; managers from the House of Representatives present the case for the government; and the counsel of the accused attempts to rebut these charges. After these proceedings, the Senators retire to deliberate as a jury. If two thirds of their number agree that the accused is guilty, it is said that a conviction has resulted; otherwise the charges are dropped.

Penalty in Impeachment Cases Whenever impeachment charges result in conviction, the accused is removed at once from the public office which he holds. If the Senate stipulates, the accused may in addition be prevented from holding "any office of honor, trust or profit under the United States" in the future. The President cannot pardon those convicted under this procedure. Subsequent trial in an ordinary court may be resorted to in cases in which imprisonment seems to be necessary in addition to the disgrace of removal from office.[16]

Suggested Reform of the Impeachment Process The recent conduct of a number of federal judges has focused the attention of the country on the inadequacy of the process of impeachment. "Merchants of justice," fee-splitters, benefactors of former law partners and relatives, and recipients of valuable gifts have been by no means the rule among the federal judges, but they have been too numerous to be ignored. The cumbersome process of voting articles of impeachment and the even more onerous burden imposed upon the Senate has convinced many people that a modification is required. It has been proposed that federal and circuit judges, who cause most of the trouble, might be tried and removed from office by three circuit court of appeals judges to be designated by the Supreme Court.

[16] For an extended book on this subject, see A. Simpson, *A Treatise on Federal Impeachments*, Law Association of Philadelphia, Philadelphia, 1917.

INTERNATIONAL AFFAIRS

Congress as a whole has a general interest in the international relations of the United States, although that field is especially shared by the President with the Senate. The President is likely to refer to the international situation in his report on the state of the nation at the beginning of each session of Congress. Appropriations for meeting the expenses of the foreign service must be approved by both houses, which means that not only recurring items like salaries, but also the purchase of new embassies, legations, and consulates must be authorized. If a treaty calls for the expenditure of public funds—as it is very likely to—then again both houses of Congress have a responsibility. A formal declaration of war requires the consent of both the Senate and the House of Representatives, although an actual state of war may be brought about by the President acting alone in his capacity as commander in chief of the naval and military forces.

Ratification of Treaties In addition to the general oversight which Congress exercises in the international area, the Senate has the important function of approving treaties which the executive has negotiated with one or more foreign countries. The President is not legally obliged to consult the Senate during the negotiation of a treaty, but wise chief executives usually follow that policy as a matter of course, since it is much more probable that the Senate will act favorably on a treaty submitted to it if senatorial leaders have had a hand in drafting the treaty.[17]

Senate Procedure in Ratifying Treaties After a treaty has been negotiated, either by a special commission appointed for that purpose by the President or through the regular diplomatic channels, the Constitution [18] requires it to be sent to the Senate. Upon arriving there, by the rules of the Senate it is referred to the influ-

[17] Although Senators helped negotiate the treaty with Spain in 1898, the treaty of the Washington Naval Limitations Conference in 1922, the treaty of the London Naval Conference in 1930, and the United Nations Charter at San Francisco in 1945, their participation has been criticized. It seems to some that this action involves a destruction of the theory of separation of powers and a violation of the spirit of the constitutional limitation on legislators holding other offices in the government. However, the method does provide effective machinery for the President to secure the necessary "Advice and Consent."

[18] See Art. II, sec. 2.

ential Committee on Foreign Relations for study and recommendations. This committee does not in any sense consider its function to be that of automatically rubber stamping a treaty.[19] Indeed, it regards itself as charged with far-reaching responsibility in ascertaining that the treaty safeguards the best interests of the United States. Discussion may run on for weeks and even months before the committee is ready to report to the Senate. When a report is finally ready, it may recommend acceptance of the treaty without change, categorical refusal to ratify, or approval after certain changes have been made or subject to specified reservations.

When the Senate gets around to hearing the report of the Committee on Foreign Relations, it may order the newspaper men and public to be excluded from its chamber if a majority so orders; but since 1929 a rule has stipulated public sessions unless specific contrary action is taken. The debate occasioned by the committee report may be of full-dress character running over days and even weeks, or it may be unimpassioned and brief. Secretary of State John Hay once likened a treaty ratification to a bull in a bullfight, remarking that one could be certain that "it [the treaty] will never leave the arena alive." [20] Yet the Senate has ratified about 80 per cent of the treaties sent to it without reservation and has refused outright only slightly more than sixty during the entire history of the country. Of the somewhat over 1,000 treaties that have been negotiated, just over 150 have been subject to senatorial insistence upon partial revision or reservation.[21] The United Nations Charter was speedily ratified in 1945 and with only two dissenting votes.

The Two-thirds Requirement The Constitution specifies that two thirds of the Senators must vote affirmatively in order to ratify a treaty, although a bare majority may accept the proposal of the House of Representatives to declare war, appropriate billions of dollars for peacetime or national emergency projects, or com-

[19] For detailed discussions of the senatorial attitude, see D. F. Fleming, *The Treaty Veto of the American Senate*, G. P. Putnam's Sons, New York, 1930; and R. J. Dangerfield, *In Defense of the Senate; A Study in Treaty-Making*, University of Oklahoma Press, Norman, 1933.

[20] See W. R. Thayer, *Life and Letters of John Hay*, 2 vols., Houghton Mifflin Company, Boston, 1920, Vol. II, p. 393.

[21] See D. F. Fleming, "The Role of the Senate in Treaty-Making," *American Political Science Review*, Vol. XXVIII, p. 583, August, 1934.

mit the United States to far-reaching undertakings, such as old-age annuities. While more than 80 per cent of the treaties have been finally ratified by the Senate, a number have had a tight squeeze getting through. Moreover, the approximately sixty which have been turned down include some of the most important treaties the United States has negotiated.[22]

Ratification by a Majority Vote While it is an exaggeration to declare that the Senate's treaty power has been sweepingly abused, nevertheless there is much to be said for reducing the requirement for assent from the present two thirds to an ordinary majority.[23] Democratic government means government by the majority of the people. When a President, a Supreme Court, a political organization, or a Senate ignores the wishes of the majority of the people and follows preconceived notions, vested interests, or the demands of a vociferous minority, democracy is dangerously challenged. Moreover, the stipulation that two thirds of the Senators must approve treaties places an unwarranted premium on international as against internal affairs. One salutary result of such a change [24] might well be the discouragement of "backdoor" practices which are scarcely in keeping with democratic political institutions. A President fails to get a treaty ratified, so he falls back on a *modus vivendi* accomplishing the same end.

Proposals to Extend the Responsibility for Treaties to the House Although the abandonment of the two-thirds rule would serve a useful purpose, it still does not meet some of the objections that have been raised by competent persons. Why should the House of Representatives be left out of the picture? Its membership is certainly much more representative of the entire people than that

[22] On this subject, see W. S. Holt, *Treaties Defeated by the Senate*, The Johns Hopkins Press, Baltimore, 1933. Among the more recent important treaties the Senate has refused to ratify are the Taft-Knox arbitration treaties of 1911, the Treaty of Versailles in 1920, the World Court treaties in 1926 and 1935, and the St. Lawrence Waterways treaty in 1934.

[23] R. J. Dangerfield, *op. cit.*, goes far in clearing the Senate of any grave charges.

[24] Early in 1942 Senator Claude Pepper of Florida stated that he intended to propose a constitutional amendment which would permit a majority of the Senate, or possibly a majority of both houses, to ratify treaties. He said: "We let a majority of Congress take us into war, why shouldn't a majority of Congress say what course we shall pursue in the peace that must follow?" See the *New York Times*, January 25, 1942.

of the Senate. The House has to approve legislation and appropriations carrying out the provisions of treaties.[25] There is much to be said in favor of a plan which would give the Senate and the House of Representatives an equal share in ratification and which would substitute an ordinary majority requirement for the present two-thirds rule. The House of Representatives approved such a constitutional amendment in 1945.

LEGISLATIVE POWERS

Constitutional Provisions Although the Constitution disposes of certain very important matters with a few words, it devotes a lengthy section [26] to an enumeration of the legislative powers of Congress. Some eighteen different categories are laid down in which Congress is granted the authority to enact laws. A third section,[27] containing seven still-effective paragraphs, proceeds to detail the prohibitions which are imposed on what Congress may do. The general conclusion is that Congress may exercise those powers which are expressly granted and not definitely prohibited and that all other fields remain within the jurisdiction of the states.

Implied Powers Within a few years after the founding of the republic it became apparent that Congress desired to pass laws relating to matters that the Constitution did not mention. Public opinion favored central handling of problems which the framers had either not anticipated at all or had assumed could be suitably managed by the states. As a result of the liberal attitude of the Supreme Court it has been possible for Congress to cope with most of the difficult problems as they have arisen, although the Supreme Court has not always been willing to adjust itself to new enlargements as rapidly as Congress might have desired. The significance of the doctrine of implied powers is tremendous—it is, indeed, impossible to conceive of what might have happened had a different ruling been made by the Supreme Court.[28]

Inherent Powers There has sometimes been a vigorous controversy as to whether Congress has inherent authority to enact

[25] Treaties are, of course, placed by the Constitution on the same legal plane as federal laws. They are certainly not on a par with federal law, however, as respects legislative procedure or democratic ratification.

[26] Art. I, secs. 7 and 8.

[27] Art. I, sec. 9.

[28] For additional discussion of this important topic, see Chaps. 1 and 3.

legislation. The Constitution itself has nothing to say on this question beyond providing that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." [29] While some persons have argued that all legislative bodies have inherent powers by their very nature and that the "necessary and proper" clause quoted above gives constitutional basis for such authority, there has been no general acceptance of the doctrine. Inherent powers are, at least in general, lodged with the states rather than with the federal government under our constitutional system.

The "General Welfare" Clause The form which the inherent-powers controversy has recently taken has centered around the clause of the Constitution reading: "Congress shall have the power . . . to provide for the common defense and general welfare of the United States." [30] The argument has been that the federal government possesses powers which are neither specifically

[29] Art. I, sec. 8.

[30] The doctrine of inherent powers is based on an argument of James Wilson, made before his work in the Philadelphia convention of 1787 and before he became a justice of the United States Supreme Court: "Though the United States in Congress assembled derive from the particular states no power, jurisdiction, or right which is not expressly delegated by the Constitution, it does not then follow the United States in Congress have no other powers, jurisdictions, or rights than those delegated by the particular states. The United States have general rights, general powers, and general obligations, not derived from any particular states, nor from all the particular states taken separately; but resulting from the union of the whole." James Wilson, *Works*, ed. by C. M. Andrews, Callaghan & Co., Chicago, Vol. I, p. 557. In *Kohl* v. *United States*, 91 U. S. 367 (1875), upholding the right of the federal government to exercise eminent domain; in *Fong Yue Ting* v. *United States*, 149 U. S. 698 (1893), upholding the right of the federal government to exclude aliens; and in *United States* v. *Kagama*, 118 U. S. 375 (1886), upholding the right of the federal government to organize and govern territory, the court seems to have based its arguments on the doctrine of inherent powers as well as on the doctrine of implied powers. In *Jones* v. *United States*, 137 U. S. 202 (1890), the court upheld the right of Congress to acquire territory (certain guano islands) almost completely by the doctrine of inherent powers.

After these cases of the 1880's and '90's, however, in *Kansas* v. *Colorado*, 206 U. S. 46 (1907), the Court in an *obiter dictum* sweepingly repudiated the doctrine of inherent powers. Nevertheless, in *United States* v. *Curtiss-Wright Export Corporation*, 299 U. S. 304 (1936), it again seemed to some to give aid and comfort to those who cherish inherent powers.

enumerated nor implied, yet which are not particularly inherent in a sovereign state. When states possess the residual right to handle a certain problem, such as agricultural adjustment or unemployment relief and are totally incapable of handling such a problem, then it devolves upon the federal government to assume the power to attempt to relieve the situation. For some time this argument made no impression upon the Supreme Court. However, in the dissenting opinion in *United States* v. *Butler*[31] Mr. Justice Stone used the argument to support the Agricultural Adjustment Act and in *Steward Machine Company* v. *Davis* and *Helvering* v. *Davis*[32] Mr. Justice Cardozo, speaking for the majority of the court, used the "general welfare" clause to justify the Social Security Act. Thus, while the doctrine of inherent powers long made little impression upon the court, the end which supporters of the doctrine desire, that is, the expansion of federal power, has recently been achieved in a large measure by the liberal interpretation of the "general welfare" clause.[33]

Emergency Powers During the last decade or so when emergencies of one kind or another have been almost the rule, some attention has been given to the so-called "emergency powers" of Congress. Inasmuch as Congress has had to pass laws on subjects which are far afield from its ordinary paths, many observers have concluded that there is a reservoir of emergency powers which may be tapped when the occasion demands. If by this is meant that Congress has special powers during an emergency that could not be exercised at any other time, there is little foundation for such an assertion.[34] The powers which Congress wields at these acute moments are not special powers at all—they are powers which might be exercised at any time but which there is little or no need to use ordinarily.

Permissive and Mandatory Powers One explanation of the enlarged role of Congress during periods of great difficulty is to

[31] 297 U. S. 1 (1936).

[32] 301 U. S. 548 (1937); 301 U. S. 619 (1937).

[33] See on this subject J. F. Lawson, *The General Welfare Clause*, author, Washington, 1934; J. W. Holmes, "The Federal Spending Power and States Rights (A Commentary on *U. S.* v. *Butler*)," *Michigan Law Review*, Vol. XXXIV, p. 637; R. E. Cushman, "Social and Economic Control through Federal Taxation," *Minnesota Law Review*, Vol. XVIII, p. 757, June, 1934.

[34] In *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398 (1934), the Supreme Court specifically said that "emergency does not create power."

be found in the permissive powers which the Constitution confers. If all powers had to be made use of at all times, then, of course, Congress would presumably be as busy during times of world peace and domestic prosperity as it has recently been. However, some of the enumerated fields in regard to which Congress passes laws are not in the mandatory class—the Constitution merely says that "Congress shall have the power," not that it must constantly use that power. As a matter of fact, most of the powers which Congress enjoys are permissive in character, although they may be regularly made use of. Mandatory powers are compulsory only to the extent that Congress is conscientious enough to obey the Constitution, for there is no machinery provided for enforcing obedience.

Exclusive and Concurrent Powers In examining the role of the states in the government [35] it was pointed out that although they have lost in large measure the power supposedly reserved to them, they are actually busier than at any previous time. The powers which the states have lost have been for the most part acquired by Congress, but they have fallen into the concurrent rather than the exclusive category. In other words, Congress is charged with two distinct types of authority: (1) powers which it exercises alone and without interference or assistance from the states, and (2) powers which it may wield but which are also shared with the state governments. Congress has the sole authority to legislate in regard to the coinage of money, the regulation of foreign and interstate commerce, immigration, and naturalization.[36] In such fields as bankruptcy it could have the exclusive power to legislate if it chose to occupy the entire territory, but it frequently will leave at least a little scope for state action.[37] Finally, there are numerous areas in which Congress and the state legislatures are both very active. Business, labor, welfare, transportation, electricity distribution, agriculture, mining, and conservation are only a few of the fields over which both nation and state have partial jurisdiction.

[35] See Chap. 4.

[36] Of course, states in the legitimate exercise of their own power may enact laws which have an indirect effect on these subjects; these laws are, however, in no sense regulation and the Supreme Court has declared unconstitutional those which seem to partake of the nature of regulation.

[37] For many years the states had almost a free hand here, but at present the federal government is distinctly dominant as far as bankruptcy is concerned.

Federal Police Power The police power, which covers public health, public safety, and public morals, has long been identified with the states. The pressures shoving the national government into this last remaining domain of the states have been so irresistible during the last twenty years that not even the Supreme Court could stem the tide.[38] Acting under powers implied from the commerce clause, the taxing power, the authority over the mails and federal property, and other enumerated grants, Congress has recently set up safety standards to be observed by interstate buses, empowered the F.B.I. to stamp out public enemies, appropriated money for the United States Public Health Service to wage war on venereal disease, and regulated the purity of food and drugs.

Limitations on the Legislative Power The Constitution not only grants powers to Congress but also lists certain powers that are strictly prohibited. Most of these lack the general importance which is characteristic of the positive grants; several of them were inserted because of iniquitous conduct of colonial legislatures which the framers remembered all too well. Others were borrowed from the English prohibitions, originally intended to safeguard the people from the tyrannical assaults of Parliament. It would not seem that many of them cause any particular feeling of inhibition or frustration on the part of Congress at present.

The Broad Scope of Federal Legislative Authority. A glance at the powers specifically granted to Congress by the Constitution gives one only a partial understanding of the extent of the authority actually exercised today. Two of the eighteen express powers relate to levying taxes, spending public money, and borrowing on federal credit; a third succinctly brings in foreign and interstate commerce. These three items alone have been expanded so amazingly that, despite the six lines of type which they require in an ordinary printed copy of the Constitution, they now constitute the basis for hundreds and even thousands of far-reaching statutes

[38] See *Hammer* v. *Dagenhart*, 247 U. S. 251 (1918), in which the court said: "The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in the exercise of police power over local trade and manufacture." In accord with expansion and development of the powers of Congress in 1941 this case was specifically overruled. See *United States* v. *F. W. Darby Lumber Company*, 85 L. Ed. 395 (1941), which upheld the Wages and Hours Act.

which Congress has from time to time enacted. The commerce clause itself has been invoked again and again during the past two decades to justify the regulation of business practices, the protection of organized labor, the regimentation of the coal-mining industry, and the stabilization of stock and grain markets. A fourth power specifically given authorizes congressional action prescribing uniform naturalization and bankruptcy rules, while the fifth and sixth relate to coinage, counterfeiting, and a system of weights and measures. A seventh power confers the right to "establish post offices and post roads"; an eighth constitutes the basis for patent and copyright laws; and the ninth and tenth relate to the establishment of inferior federal courts and the defining of piracies, felonies committed on the high seas, and offenses against international law. In view of the relative importance which has been assigned to peaceful pursuits it is somewhat surprising to find the next seven of the specific grants to Congress related to the armed forces, war, and the national defense against external enemies. The last two items are of comparatively minor import. The first gives the power to legislate over the District of Columbia and concerning public buildings and forts located in the states, while the latter sums up the authority already granted under the "necessary and proper" clause. Although during the early 1930's there was some feeling that Congress lacked adequate powers with which to cope with the complicated problems confronting the United States, such expansion has now taken place that there is little basis for such fears. Indeed, the chief apprehension in many minds at present seems to be that too much responsibility has been loaded on Congress, especially in those fields which were long left to private and state control.

Selected Bibliography

Colegrove, Kenneth W., *The American Senate and World Peace*, The Vanguard Press, New York, 1944.

Crandall, S. B., *Treaties, Their Making and Enforcement*, 2d ed., Columbia University Press, New York, 1904.

Dangerfield, R. J., *In Defense of the Senate; A Study in Treaty-Making*, University of Oklahoma Press, Norman, 1933.

Davis, J. W., *The Treaty-Making Power in the United States*, Oxford University Press, New York, 1920.

Dimock, M. E., *Congressional Investigating Committees*, The Johns Hopkins Press, Baltimore, 1929.

Eberling, E. J., *Congressional Investigation*, Columbia University Press, New York, 1928.

Fleming, D. F., *The Treaty Veto of The American Senate*, G. P. Putnam's Sons, New York, 1930.

Flynn, J. T., *Meet Your Congress*, Doubleday, Doran & Company, Garden City, 1944.

Haynes, G. H., *The Senate of the United States*, 2 vols., Houghton Mifflin Company, Boston, 1938.

Holt, W. S., *Treaties Defeated by the Senate*, The Johns Hopkins Press, Baltimore, 1933.

Lawson, J. F., *The General Welfare Clause; A Study of the Power of Congress under the Constitution*, 2d printing, author, Washington, 1934.

Simpson, Alexander, *A Treatise on Federal Impeachments*, Law Association of Philadelphia, Philadelphia, 1916.

Warren, Charles, *Congress, the Constitution, and the Supreme Court*, Little, Brown & Company, Boston, 1925.

Willoughby, W. W., *The Constitutional Law of the United States*, 2d ed., 3 vols., Baker, Voorhis & Company, New York, 1929, Chaps. 85-87.

19 . *The Making of Laws*

PHYSICAL SETTING

House Chamber The formal process of lawmaking is carried on in the chambers of the House of Representatives and the Senate which are located in the two wings of the Capitol Building in Washington. The House of Representatives occupies a large room in the south wing of the Capitol which is characterized by white marble, mahogany, black leather, eagles, and neutral walls. At one time individual desks were provided members, but the enlargement in membership many years ago necessitated the substitution of chairs. The members of the Democratic party are assigned seats to the right of the Speaker, while the Republican members occupy the space located on the left side. Although individual seats are assigned, members pay little attention to this arrangement and sit wherever they like on their side of the chamber. In front there is the marble dais of the Speaker, with tables just in front and below the Speaker for the reading, journal, and certain other clerks. The mace, which is the symbol of authority, is placed on a marble pedestal to the right of the Speaker's chair when the House is in formal session. Around the four sides of the hall are galleries for the press, diplomatic corps, President, members' relatives, and the general public. The acoustics were so poor for many years that only "leather-lunged" members could be heard at all distinctly, but a modern loud-speaking system has corrected that defect to a considerable extent. A very efficient air-conditioning plant provides a comfortable atmosphere even on the hottest days. The several doors of the House chamber are invariably guarded by attendants who permit admission only to members and former members. Conveniently outside the hall there are lobbies which are reserved for the use of members and their friends, while not far away is the ornate room of the speaker. In the basement there is a restaurant, barber shop, and other facilities for the use of the Representatives.

Senate Chamber The hall used by the Senate is rather similar in appearance to that of the House, except that it is smaller and less crowded. Members occupy their assigned desks more faithfully than do the Representatives their seats, but even so they move about frequently and sit here and there for a few moments of conversation with a colleague. The Democrats occupy the space to the right of the presiding officer and the Republicans to the left as in the house. The dais in front which provides a seat for the presiding officer and tables for the clerks omits the white marble so conspicuous in the House chamber. There are the same galleries, lobbies, and corridors, but the presiding officer's room can be entered immediately from the Senate chamber itself. Restaurant and other facilities are provided, as in the case of Representatives.

Committee Rooms Much of the actual work of Congress is carried on in committee rooms rather than on the floor of the houses. All of the important committees of the House and the Senate have rooms either in the Capitol itself or in the modern office buildings which flank the Capitol.

Individual Offices Each Senator and Representative occupies a suite in the Senate Office Building, which is connected to the Capitol by subway, or in one of the two House of Representatives Office Buildings. Outer rooms provide space for clerks and secretaries, while inner quarters are available for private offices and conferences. These congressional offices lack the ornateness and the spaciousness of some of the offices in the new Justice, Interior, and Commerce buildings, but they are nonetheless quite adequate. The political work of the members of Congress may be divided between these offices and the Capitol itself; most of the direct lawmaking functions are confined to the committee rooms and the legislative chambers. But studying reports, interviewing pressure agents, and interchanging opinion with constituents, all of which have an important bearing on the legislative process, are carried on to a considerable extent in the suites of offices.

FORMS OF LEGISLATION

Bills and Resolutions Whether Congress be elaborating the structure of government, enlarging the powers of a particular agency, appropriating money, or levying taxes, it does it by enacting laws. That is not to say that every action of Congress neces-

sarily involves the use of the lawmaking power, for the two houses may adopt concurrent resolutions which express an opinion but do not have the force of law. However, by far the greater part of the work the Senate and the House of Representatives handle is transacted through the medium of laws. Some of these originate as bills and others as joint resolutions, which Robert Luce has described "as really bills," adding that "in procedure [they] are treated as bills," and that "opinion as to what a joint resolution might include has changed from time to time." [1] For all practical purposes the two are scarcely to be distinguished in this day, although the latter are in general far less common than the former and deal with matters of temporary and as a rule of minor moment.

Variation among Bills More striking than the difference between joint resolutions and bills is the variation which is to be observed among bills themselves. Some of them are intended to bring about far-reaching changes in the program of the government, embody the results of months or even years of investigation, and cover fifty, seventy-five, or even more printed pages. On the other hand, there are bills which pertain to private affairs, such as claims for damages. In general, the latter are known as "private" bills, while the former are known as "public" bills. But here, as in the case of bills and joint resolutions, the distinction is not always followed in practice.

DRAFTING AND INTRODUCTION OF BILLS

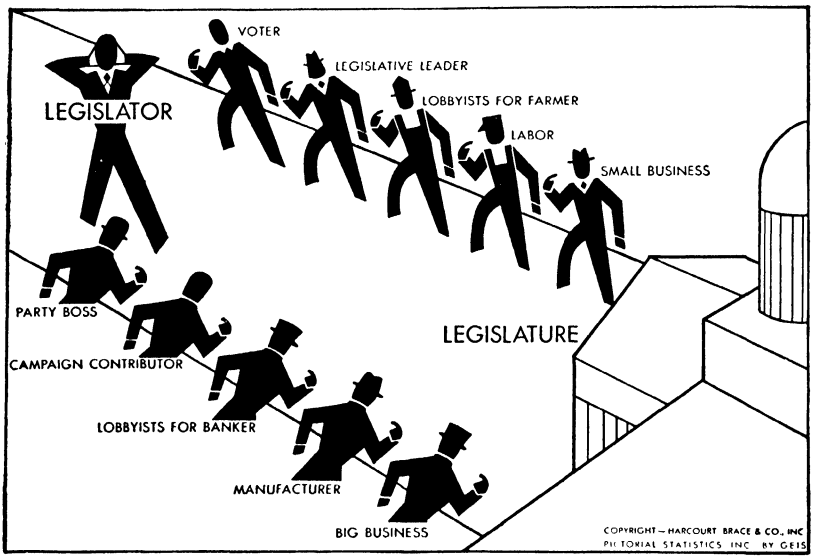
Where Bills Originate There is a widespread belief that proposals to enact laws originate among the Senators and Representatives themselves—as indeed some of them do. However, for every bill which is solely the idea of a member of Congress there are scores which have their inception in the office of the President, in the multiplicity of administrative agencies, in the councils of pressure groups, and in the minds of private citizens.

Role of Senators and Representatives In general, the Senators and Representatives act as intermediaries rather than as originators in the making of laws. They receive proposals from the various agencies of government and private groups which are anxious to secure legislation. After they have sifted the good from

[1] See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 556.

the bad, the meritorious bills from the crackpot and harebrained notions, they proceed to guide a varying number of these through the various stages incident to lawmaking. However, it would not be fair to ignore the determined efforts of individual congressmen in the lawmaking field. Although the vast majority of bills originate outside of the houses of Congress and although not a few members of the legislative branch are utterly barren of ideas which would lead to statutes, still there are always a few Senators and

INFLUENCES ON THE LEGISLATOR



Pictograph Corporation.

Representatives who maintain a deep-seated interest in one or more fields. They do not necessarily seclude themselves from others who may have a similar interest—indeed more often than not they work hand in glove with at least a little group of kindred souls. However, if the original bills are not their brain children they at least contribute in no small measure to the detailed phraseology and consequently leave a distinct impress on them.

Formal Drafting It is one thing to have a general notion of what a bill should include and quite another thing to have a bill which can be introduced into a legislative body. An idea may be

expressed verbally or stated in a letter, but Congress will not give its attention to proposals in such a form. The general idea and the accompanying details must be organized more or less carefully and the resulting product must then be phrased in the form prescribed for bills. First of all, the bill must have a title which gives some hint as to its contents—for example, "A bill to further the national defense and security by checking speculative and excessive price rises, price dislocations and inflationary tendencies, and for other purposes." [2] Then unless it is to be without legal effect, an enacting clause must be inserted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled." Great care must be taken to state what is intended to be accomplished with clarity and preciseness, and omissions must be skillfully avoided lest a loophole destroy the intended effect. The body of the bill is organized into titles and sections if it concerns a subject of any particular consequence.

Bill-drafting Assistance It should be apparent that drafting requires a specialized knowledge and skill not possessed by the average person. The very form and the technical requirements are such that even one who is competent to write articles, books, and business reports as a professional can scarcely make headway in drafting a bill. Lawyers sometimes take a hand at preparing bills and, of course, have the advantage of being familiar with legal terminology. However, the task of a lawyer is the interpreting of laws rather than their original preparation. Inasmuch as the task of bill-drafting is one calling for technical assistance, each house of Congress maintains a bill-drafting agency, known as "The Office of Legislative Counsel." [3]

Number of Bills No legislative body in the world can begin to equal the record of the Congress of the United States in multiplicity of bills. In many countries only a hundred or so bills will be brought to a national legislature in the course of an entire year.[4] Where the cabinet form of representative government prevails, bills are entrusted to the leaders who head the government. Hence

[2] This bill was drafted in the executive office of the President and introduced in Congress on August 1, 1941.

[3] On this office, see F. P. Lee, "The Office of Legislative Counsel," *Columbia Law Review*, Vol. XXIX, pp. 381-403, April, 1929.

[4] In England perhaps three hundred bills of general character will be brought to Parliament in a year.

there are not the numerous bills relating to the same subject, the pet projects of pressure groups, or the crackpot schemes of cranks.[5] But in the United States virtually anyone considers himself quite competent to think up a bill, although he may call for assistance in the formal drafting. Moreover, it is so easy to get a bill introduced that one might almost suppose from the statistics that the framing of bills had become a national pastime. Inasmuch as large numbers of petty bills, calling for pensions, local improvements, and other minor matters, are grouped together into a few omnibus bills, the actual number of bills introduced is even larger than the official figures show. For example, the Sixty-ninth Congress, 1925-1927, which certainly could not be excused on the ground of the extreme urgency of more recent Congresses, combined 5,998 of these minor bills into eight great omnibus bills; yet even so it could point to 23,250 bills and 638 resolutions—a grand total of 29,878 measures in two years. Recent Congresses have ranged from twenty to thirty thousand bills and resolutions, with the latter number more nearly approximated than the former.

Introduction Only members of Congress are permitted to introduce bills, but this does not constitute a very serious barrier to those who desire to lay legislative proposals before Congress, for a friendly congressman is almost always available. Congressmen assume no responsibility for the bills that they sign, although they often note that a bill has been introduced "by request," thus indicating that they are in no sense intimately associated with it. A copy of the bill signed by the Senator or the Representative introducing it is laid on the desk of either the secretary of the Senate or the clerk of the House of Representatives,[6] as the case may be, and that is all there is to formal introduction. Two thousand or more bills have been introduced under this simple device during a single day! Tax bills are supposed to be started in the House of Representatives, but other measures may be introduced in either house with equal facility. The larger size of the House of Representatives and the comparative nearness of the Representatives to

[5] An interesting article on this subject appeared some years ago, but is still worth consulting. See Charles A. Beard, "Squirt-Gun Politics," *Harper's Magazine*, Vol. CLXI, pp. 142-153, July, 1930.

[6] In the case of the House of Representatives a slot resembling a mail slot is provided. A member with bills to introduce has only to send a clerk or messenger with the bills to this slot.

the "grass roots" does, however, result in the preponderance of bills originating there. As soon as the employees of the House or Senate get around to it, each bill is given a number.

THE COMMITTEE STAGE

Reference to a Standing Committee Shortly after a bill has been introduced in either the House of Representatives or the Senate, it is referred to a standing committee for consideration. In the great majority of cases there is little question as to what committee will receive a bill, for the title of the bill will indicate what particular standing committee should receive it. Formerly, Speakers of the House frequently used their power to refer as a very potent device for controlling the course of legislation. If a certain committee were known to be unfavorable to a bill, the Speaker would see that a bill which he opposed went to that committee, irrespective of whether it was the logical committee to receive the bill or not. Again, if the Speaker favored a bill and discovered that the regular standing committee on that field opposed the measure, it was customary for the Speaker to assign the bill to some other favorable committee. Speakers still decide to which committee a bill shall be referred in those exceptional cases in which there is some question as to the province involved, but it is not at present the accepted practice for Speakers to exercise this authority as freely or as selfishly as was the case prior to 1910-1911. In the Senate the reference to a committee is even more automatic than in the case of the House, for the presiding officer there never has had the arbitrary power to assign bills to committees.

Printing After the bill has been referred to a standing committee, it is ordered printed, irrespective of whether it has any merit or support. Copies are furnished the members of the committee and to Senators and Representatives and may usually be obtained by interested citizens.

Committee Consideration The standing committees may find themselves with hundreds of bills referred or they may have a lesser number to consider. Especially if they do not have too much to do, they are inclined to be quite jealous of their prerogative and may even ask to have a bill reassigned which they feel has been improperly given to another committee. If the committee is a large one which has heavy tasks to perform—the Commit-

tee on Appropriations,[7] for example—it may find it convenient to subdivide into smaller groups for the actual work of examining what has been assigned to it.[8] These subcommittees act very much like regular committees, sorting the wheat from the chaff, deciding what changes should be recommended in a certain bill, and otherwise preparing to dispose of the business entrusted to them. The procedure the committees follow depends quite largely upon their own inclination, for the rules of the Senate and the House of Representatives do not regulate them in any detail. Inasmuch as the formal sessions of the Senate and the House of Representatives are held in the afternoon, the committees do their work in the morning.

The Mortality Rate After the committees have sorted out the bills which are deemed worthy of consideration, they file away the great majority, or, as it is sometimes expressed, they pigeonhole them. In rare cases a bill may be rescued from the oblivion of the pigeonhole, but from 50 to 75 per cent of the bills introduced in Congress come to final rest in committee files and are never heard of again. It has been proposed that the committees be compelled to report every bill out, even if their recommendation is unfavorable. Some of the states expect that much from their legislative committees and it is claimed that abuse is thereby prevented.

Committee Investigation The bills that pass under the scrutiny of the committees receive varying amounts of attention. The Committee on Ways and Means of the House spent more than three months on a single tax bill in 1941.[9] In this instance it may be added that the committee really drafted the bill, for although various proposals relating to the raising of additional revenue had been advanced, no systematic work had been done. On the other hand, a bill which comes from the office of the President, and especially one from a commission which has spent months or even years preparing it, does not require anything like the spadework noted in connection with the tax bill. The committee may distrust the con-

[7] This committee in the House always has a great deal to do, for the proposals to appropriate money are legion. It usually operates in some fifteen subcommittees.

[8] Each subcommittee ordinarily has five members.

[9] See the letter of Chairman Robert L. Doughton of the Ways and Means Committee in the *New York Times*, August 3, 1941. This letter, which was addressed to the President, throws a good deal of light upon the procedure used by that committee.

clusions drawn by the experts who have been working on the bill, but it can scarcely disregard the investigations themselves. Therefore the deliberations of the committee will probably be directed at the policy incident to the bill rather than to the details, although amendments may be made even on minor points if the committee decides to accept the general principle.

Sources of Committee Information When extensive consideration is given to a bill, the committee may seek to obtain all the light on the subject which is available. Its staff may search through the committee files and consult the facilities of the Library of Congress. Members of the committee may themselves be sufficiently interested to study the problem and to amass considerable quantities of material relating thereto. Nor is it uncommon to ask for the assistance of specialists in the administrative departments. All too many bills are reported without adequate investigation of the problems incident to their successful enforcement, but this does not justify a blanket statement that laws are enacted without substantial foundation. In 1946 Congress decided to provide a research staff for each standing committee. Some of the committees have employed well qualified research personnel, thus significantly strengthening themselves; others unfortunately have given these positions to hacks and political hangers-on.

Public Hearings During recent years it has increasingly been the practice to hold public hearings on bills of great importance around which much public interest centers. On these occasions proponents and critics of proposed legislation will be given an opportunity to present their cases for or against a bill. Not everyone, of course, can air his views, but committees ordinarily examine the applications which are received with reasonable care and extend the courtesy of a hearing to representatives of those interest groups which are especially concerned. Time is allotted to those who are given the privilege of speaking, with the result that carefully prepared statements are frequently presented. For the most part these hearings are held in the committee rooms, but at times they are moved to the caucus room or some other more commodious place because of the public interest in them.

By no means all of the members attend these public hearings either because of lack of interest or conflicting engagements, but the committee representation is for the most part good. In addi-

tion, a record is kept so that interested members not present may refer to the transcript. On these occasions a large measure of informality prevails. The rooms are not too large; the committee members and the speaker sit around large tables; a conversational tone is used; and the spectators, who often have a serious interest, crowd near by in the remaining portions of the room. In addition to the prepared statements of witnesses, numerous questions are often put by members of the committee for the purpose of elucidating certain points or eliciting additional information.

Outside Influences In addition to the testimony received in connection with public hearings, standing committees frequently are bombarded with various sorts of attention from the outside. The President himself may talk personally or even write letters to ranking members of the committee considering a very important measure. Officials of administrative agencies will ask to be heard in person or submit elaborate statements of their reasons for requesting a favorable action from the committee on a certain bill. Representatives of pressure groups also manage to make their influence felt whether public hearings are held or not.[10] Some of the most powerful are able to get themselves invited to the private hearings of committees. If lobbyists cannot get themselves asked in for counsel, they may be able to interview individual members in their offices or on social occasions. They may compile elaborate reports filled to the brim with factual material and submit them to the committee in charge of a certain bill. Finally, they furnish the names of committee members to local groups and individuals who support the national pressure group, with the urgent plea that letters and telegrams be poured into Washington requesting a specified action by the committee.

Committee Decisions On the basis of its own investigations, the information submitted at public hearings, the advice of high government officers, and the activities of pressure groups, a committee finally concludes what report to make on a bill. The committee meets for this purpose in an executive session, canvasses the sentiment of the various members, and decides by majority vote what to do. Congressman Robert Luce characterizes these executive sessions as "the most interesting, important, and useful part of

[10] For a more detailed discussion of the role of pressure groups, see Chap. 11.

the work of a congressman, and the part of which the public knows nothing. Indeed, the ignorance of the public about it is one of the causes of its usefulness. Behind closed doors nobody can talk to galleries or the newspaper reporters. Buncombe is not worth while. Only sincerity counts." [11] The committee may decide to report a bill as it is, but this is not the rule. More often it accepts the general outline of a bill, striking out certain provisions and adding new ones; occasionally the committee deletes everything after the title and inserts an entirely new bill. If certain members do not agree with the majority, they may draw up one or more minority reports in which they inform the Senate or the House of Representatives of what they favor.

Discharging a Committee Every now and then an obstreperous committee will pigeonhole a bill which has substantial support among both the congressmen and the people. The problem is then to get the bill out of the committee so that the whole body can vote on it. One of the achievements of the "revolution" of 1910-1911 was a rule permitting a majority of the Representatives to force a committee to surrender a bill within fifteen days provided the committee had already had the bill that long a time. This modification has proved less useful than its proponents imagined, for it is very difficult to secure the support of as many as half of the Representatives for such a purpose.[12]

THE CAUCUS SYSTEM

There are numerous bills which are of no particular interest to a political party and which, therefore, are permitted to go through the regular channels, with the individual members of Congress taking stands as they please. However, many of the most important legislative proposals do attract party attention, either because they pertain to its platform promises or because they appear to have some bearing on the party's future interests. Then, too, the fact that scarcely any formal provision is made for leadership in Congress has necessitated an informal arrangement under which some

[11] See his *Congress—An Explanation,* Harvard University Press, Cambridge, 1926, p. 12.

[12] On the use of this device, see J. P. Chamberlain, *Legislative Processes; National and State,* D. Appleton-Century Company, New York, 1936, pp. 129ff.

semblance of a legislative program could be drawn up and put through. The mechanism which has been developed to meet such requirements as these is known as the "caucus" or "conference."

Nature of a Caucus A caucus is a meeting of the members of a political party to canvass a situation and to adopt measures which will safeguard the interests of the party. As the term is used in relation to Congress, it refers to huddles of the Democrats or Republicans in the Senate or the House of Representatives. The party leaders call the members of their party in the Senate or the House together, usually in the caucus room of the office building. All members of the party are expected to attend unless they have a valid reason for absence—if they neglect these meetings often they are likely to be regarded as not in "good standing" in the party. At these meetings of party representatives in Congress numerous items may be gone over. The party leader, steering committee, floor leader, whips, and party committees on congressional committees are chosen; in other words, a party organization is effected. Then, if the caucus is of the dominant party, it is necessary to plan a positive program for the particular session of Congress. In the case of a minority caucus this phase is less important, although the party is likely to agree to oppose certain controversial bills which are regarded as especially dear to the majority party. In addition to the caucus meeting at the beginning of a session, other meetings are called from time to time to discuss the party attitude on various important bills.

Binding Character of Caucus Decisions During caucus meetings the party members in the Senate or the House of Representatives are perfectly free to express their opinions and to attempt to persuade the caucus to take their view. However, after the caucus has decided on a stand, all of the members are expected to abide by its decision, even though they may hold very divergent views as to the desirability of a measure.[13] If a congressman has reason to believe that the caucus action will be contrary to his own very strong views, he may not attend the caucus meeting and consequently is not bound by its action, but he can scarcely expect to follow this course at all frequently unless he expects to be

[13] The Republicans pride themselves on giving reasonable freedom. The Democrats require a two-thirds vote of a majority of party members to make caucus action binding on all members of the party.

ignored by his party, given minor committee assignments, and cut off from future political advancement. Moreover, if a member of Congress has committed himself definitely on a measure to his constituents, he is not expected to reverse himself and follow the caucus. But with these exceptions the decision of the caucus controls the Democratic or the Republican legislators. This practice has occasioned severe criticism at times. On the other hand, practical considerations demand at least a partial program, else the time for adjournment arrives without anything accomplished. Inasmuch as no machinery is provided in the Constitution for bringing this end about, the caucus system has grown up outside of the legal structure as a sort of "invisible government." It doubtless has its drawbacks, but it performs an essential function, particularly in the House of Representatives.

Role of the Caucus in the Senate It should be pointed out at this time that the caucus system is used distinctly more in the House of Representatives than in the Senate. Senatorial caucuses were at one time almost as powerful as those of the House, but for more than a decade now the caucuses in the Senate have limited themselves to setting up party machinery and arranging committee assignments, leaving the Senators free to divide themselves as they like on pending bills.[14] That is not to say that the majority floor leader, the steering committee, and the party whips will not labor energetically to pass a bill which they adjudge to be in the best interests of the party; but no official caucus is taken which would bind the party Senators in voting. In 1947 the Republicans in the Senate set up a Policy Committee which serves to some extent the purpose of a caucus.

Steering Committees The chief instrument which a party caucus uses in carrying out its functions is the steering committee. This device is particularly associated with the majority party, but both of the parties maintain them—even in the Senate there is a majority and a minority steering committee. Neither the rules of the House of Representatives or the Senate nor the laws of the United States recognize these committees. Their exact composition varies from party to party and even within a single party from

[14] See George Wharton Pepper, *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930, for an illuminating account of the role of the caucus in the Senate.

time to time, depending upon the situation. In general, one may say that the leaders of each party in the Senate or the House make up the party steering committee in that house. Membership is formally assigned by the caucus itself, but designation is more or less automatic because of positions of pre-eminence which certain persons have achieved for themselves in party circles. Ordinarily there will be anywhere from a dozen to twenty members of each steering committee. Each has a chairman, chosen by the caucus,[15] who acts as floor leader of his party. This person, if of the majority party, is exceedingly influential in the conduct of House or Senate business—and even the chairmen of the minority steering committees exert not a little power. Whips are attached to the steering committees in order to assist the floor leaders in putting the program through—by seeing that members are at hand for roll calls and votes. The steering committees frequently act for the caucus in matters of detail, draw up recommendations which the caucus will feel impelled to accept, plan tactics that will be used in connection with a certain bill, and watch the interests of the party on the floor. The majority steering committee in the House confers regularly with the Speaker and the Committee on Rules in regard to order of business, special rules relating to amendments and debate on a controversial bill, and so forth, and has a great deal to say about these matters. Some years ago a member of the House Rules Committee, Representative Pou, made a statement which is probably still accurate:

> It cannot be denied that the steering committee is all-powerful. It can and does forbid the consideration of any measure to which a majority of the steering committee is opposed. This may be a surprising statement to some, but the steering committee is more powerful than any of the regular constituted committees of this House. It is more powerful than the Committee on Rules because the majority of the Committee on Rules will not report any special rule in defiance of the mandate of the steering committee, which is the great super-committee of this House, with power to kill and to make alive.[16]

[15] Senator Alben W. Barkley, the majority floor leader in the Senate following 1941, was actually chosen by President Franklin D. Roosevelt. Barkley and Pat Harrison were both candidates, with Harrison apparently in the lead. Mr. Roosevelt wrote a letter supporting Barkley. This caused considerable resentment, but led to the choice of Barkley by a narrow margin.

[16] Quoted by F. A. Ogg and P. O. Ray in *Introduction to American Government*, rev. ed., D. Appleton-Century Company, New York, 1938, p. 352, footnote.

PROCEDURE ON THE FLOOR

Calendars When a committee is prepared to report a bill to either the House of Representatives or the Senate, it notifies the clerk of the former or the secretary of the latter of that readiness and returns the bill. The bill is then registered on a calendar which is supposed to assist in determining the order of business. The House of Representatives maintains three of these for different type of measures: (1) the calendar of the whole House on the state of the union, commonly referred to as the "union calendar," for bills appropriating money or dealing with public property; (2) the House calendar, for other public bills; and (3) the committee-of-the-whole House calendar, for special or private bills. Bills are listed on these calendars in the order in which they are received from the committees and remain there until the final adjournment of a Congress,[17] unless they are removed for consideration.

Congestion of the Calendars Despite the apparent ruthlessness of the standing committees in pigeonholing bills, the calendars of both houses are congested. This, of course, means that neither the Senate nor the House of Representatives will have sufficient time to consider all of the bills that are listed. The rules provide that bills shall be taken up in order, but this is observed more by exception than by obedience, especially in the House of Representatives which is more congested than the Senate.[18] In order to select from the mass those bills which are deemed especially vital, the majority steering committee and the Speaker of the House canvass the situation at regular intervals, causing the Committee on Rules to bring in a special order of business scheduling a bill for immediate consideration. The remainder of the bills are allowed to remain on a calendar until finally at the end of a Congress they automatically die through want of action. Many of them are introduced again the next time Congress meets and may have better luck in being chosen for consideration. There is some feeling that the steering committee does not always use the best judgment in

[17] Bills remain on a calendar not only until the end of a session but until the end of a Congress. Annual sessions are held, but a Congress extends over a period of two years.

[18] The Senate does not like to give special precedence to certain bills and follows the regular order much more faithfully than the House.

designating the bills which are to be given their chance. Certainly there are cases where partisan measures have been given precedence over bills of far greater importance. But under the present system some method must be devised for picking the bills that are to be considered on the floor, for there is no possibility of voting on all of them.

Committee Reporting When the time fixed for bringing a bill to the floor of the House of Representatives has arrived, the House ordinarily meets as a committee of the whole. Although the Senate prior to 1930 used the committee of the whole even more perhaps than the lower house, it has now abandoned this arrangement for the consideration of ordinary bills and meets in formal session.[19] The committee which has been charged with the bill takes seats around tables which are provided on the floor—if there is a majority and minority report, the majority members occupy seats at one table and the minority use the second table. After the reading clerk has mumbled through the bill so perfunctorily that it is almost impossible to understand his words—this is known as the "second reading" and is the only one where any pretense is made of reading the bill as a whole[20]—the chairman of the committee arises and explains the committee's recommendations. A representative of the minority is then given an opportunity to speak for those dissidents who cannot agree with the majority report. As the report is made, members frequently offer amendments which may or may not be acceptable to the committee. If the committee is willing to accept the amendments, the necessary changes are incorporated without a vote, but otherwise the members of the House must agree by a majority vote that these modifications are desirable. If a special rule shutting off amendments has been adopted, no amendments will be considered at all, unless the committee itself can be persuaded to accept them as part of its report.

Debate Following the report of the committee at least some time is permitted for debating the bill, unless the Committee of Rules has brought in a special order, or "gag rule," which prohibits an expression of opinion from the members. During the

[19] The Senate continues to use the committee of the whole in debating treaties.

[20] The first and third readings are by title only. Under a suspension of the rules, which is not uncommon during the closing days, even the second reading is dispensed with except in so far as the title is given.

period 1933-1936 debate was frequently either dispensed with entirely or so limited that it amounted to little, but ordinarily the House of Representatives is not disposed to pass a bill without reasonable opportunity to debate it. The attitude of the Senate is even more pronounced and if any Senator persists in his demand to prolong debate a vote will usually not be taken. Inasmuch as the House of Representatives carries on most of its debate as a committee of the whole, members speak under a rule which limits them to five minutes, unless they secure unanimous consent to an extension of time.[21] This means that debate in the lower house is pointed, spirited, and limited to a reasonably short aggregate period, during which numerous Representatives participate.

Debate in the Senate There are few points on which the Senators are as sensitive as on freedom of debate. Although they may be bored to death by the interminable speeches of colleagues, they are loathe to consider any rule which would bring debate within reasonable limits. Almost from the beginning the Senate has operated without a rule which permits a motion calling for the "previous question." [22] Senators are not supposed to speak more than twice on the same bill during a single day, but this constitutes no very serious limitation. At times there will be enough sentiment to invoke a "unanimous-consent" rule which has the effect of bringing debate to an end. A cumbersome closure rule, adopted during the days of World War I, is theoretically of some value, but it is finally resorted to with such senatorial reluctance that it is actually of slight significance except in the most extreme cases. Under this 1917 rule one sixth of the Senators must sign a petition to invoke closure; then on the second calendar day a roll-call vote is taken on the question which must show two thirds of the Senators in favor of ending debate; even then each Senator must be permitted one hour for debating the measure, which if all Senators availed themselves of the privilege would require at least sixteen ordinary days.

[21] Extensions of time for five minutes are not exceptional, but they are not requested by most speakers.

[22] A motion for the "previous question" is a call that the question under discussion be voted upon immediately. It cannot be argued, but must be voted upon at once. If it is accepted the bill under consideration must then be put to an immediate vote also. While the Senate abandoned the procedure in 1806, it is still in common use in the House of Representatives.

Filibustering Occasionally a single Senator or a small group of Senators will be so opposed to a pending measure or so anxious to obtain a concession that they will stage what is known as a "filibuster." Securing the floor of the Senate they will go on for hours talking about trivialities and even consuming the valuable time by bringing up entirely extraneous matter. The Senate rules provide that "No one is to speak impertinently, or beside the question," but this has not prevented obstructionist Senators from reading the Bible, refreshing the memories of their few hearers with the Dictionary, or otherwise preventing action on a measure which they oppose or wish to hold up until their terms have been met. Prior to 1933, filibusters were especially common during the closing days of a short session which necessarily had to come to an end by March fourth. It was rather generally believed that the Twentieth Amendment might serve among other things to make filibusters less common, but it has apparently not had that effect.[23] Foreign observers cannot understand why the United States puts up with dilatory tricks, when the majority clearly wants to take action and particularly when the welfare of the country is being jeopardized.

Third Reading All bills must be given three readings in both the House of Representatives and the Senate. The first takes place when the bill is referred to a committee; the second at the time of the committee report; and a third one before the bill finally passes. Amendments and debate ordinarily are associated with the second stage, but they may also accompany the third reading, especially in the Senate. After successfully passing the second reading, a bill is engrossed—or formally copied by the engrossing clerks—and placed upon a calendar. When the regular order of business brings the bill up for final passage or when a special order has rescued it from the oblivion of a crowded calendar during the final days of a session, the third reading is given. If the vote is favorable the bill is ready to go to the other house or, if the other house has already accepted it in identical form, to the President.

Voting There are four methods of voting used in the two houses of Congress. The most prevalent is the familiar *viva*

[23] For a recent study of filibustering, see F. L. Burdette, *Filibustering in the Senate*, Princeton University Press, Princeton, 1939.

voce, or voice vote. If there is a fairly even split and it is difficult to ascertain how the voice vote has gone, a rising vote may be ordered. A third method, which may be demanded by one fifth of a quorum, requires that congressmen file past tellers to be counted. Finally, there is the formal roll-call vote which is used in the final passage of most important bills. The clerk calls the roll of the members alphabetically and each one answers "yea" or "nay" to be permanently recorded in the journal. One fifth of the members may request a roll-call vote even during an early stage of a bill, but in practice this is largely restricted to the third reading. A single roll call in the House of Representatives consumes something like thirty-five minutes which, considering the generous use made of this method of voting, presents a serious problem. During a single year the lower house may have the roll called more than two hundred times [24] which is the equivalent of at least a month of sessions. Considering the popularity which gadgets enjoy in the United States, it would seem that the House of Representatives particularly might install one of the electrical voting systems which several state legislatures and even a few foreign legislatures now employ. But Congress seems satisfied to get along with its present facilities, despite the fact that many bills cannot be given a hearing for lack of time.

When congressmen are absent from Washington or ill, they sometimes arrange to have their votes "paired" with those of absent colleagues who stand on the other side of a question. In this way they do not lose their voice entirely despite their absence from the chamber. In contrast to these members who want their votes counted, there are always those who are very reluctant to have their votes recorded at all. Party pressure may compel them to vote finally, but it is not uncommon to find them slipping away before a vote is taken or even refusing to answer when their names are called.

The Lobby We have already noted that pressure groups are active in cultivating members of standing committees. It must be apparent that they do not content themselves with that activity, for although important in themselves committees do not have the final word. More than that, even after a committee has refused to go as far as a lobbyist desires, he may save the day by appealing

[24] This includes roll calls to ascertain quorums as well as formal voting.

to the Senators or the Representatives to amend from the floor. The techniques which are employed in this connection have been dealt with in an earlier chapter;[25] it remains here only to call attention again to the important role which the pressure groups frequently have in determining the outcome of a vote.

Conference Committees It is, of course, not enough that the Senate and the House of Representatives agree on the principle of a bill; they must see eye to eye on every jot and tittle, no matter how unimportant the detail might seem. Occasionally both houses will pass an important bill in identical form. But more often than not there will be some aspects of a House bill which the Senators do not like and vice versa. This means that the bill as changed must go back to the house in which it originated for approval of amendments. If the changes are of minor import, the original house may agree to them without a great deal of question; but if they are significant, as is often the case, then there may be distinct reluctance to accept them. If it appears that the two houses cannot arrive at an agreement by ordinary means, it is the custom to set up special conference committees to work out a compromise. After the request of one of the houses for a conference has been accepted by the other, the presiding officers each designate three or, in exceptional cases, even five or more managers to serve on a conference committee. These conferees may be given instructions by their respective houses,[26] although there is disposition to allow them a free hand. They meet behind closed doors and sometimes for days and even weeks explore the various avenues of compromise. If they fail to agree, they ask to be discharged by their houses; otherwise they present a report which must be accepted or rejected as a whole. Usually the exigencies of the situation are such that the two houses will reluctantly approve the compromise even if with a noticeable lack of enthusiasm.

Steps after a Bill Leaves Congress It has already been pointed out that the engrossed copies of bills duly signed by the presiding officers of the two houses are sent to the office of the President very soon after they have passed both houses. If the President vetoes a bill, it, of course, must return to Congress and

[25] See Chap. 11.

[26] The lower house is more inclined to give instructions than the Senate since it feels that its managers are too easily out-talked by the Senators.

receive the support of two thirds of both houses before it can become law. If a bill is not vetoed by the President or if it is passed over a presidential veto by Congress, it goes at once to the Department of State. If a bill itself specifies when it shall take effect, that date controls; however, in most instances no date is mentioned and hence it waits the official promulgation of the Secretary of State. All of the bills and resolutions from a session are held until Congress has adjourned; then they are published in a series of volumes known as *Statutes at Large of the United States*.[27] As soon as the publication has been completed, the Secretary of State officially declares them to be in effect.

Congressional Publications Several publications of Congress are valuable sources of information in connection with the process of lawmaking. The *Congressional Record* is published every day during sessions of Congress and often for several weeks after adjournment. It does not, however, contain the texts of bills, the detailed reports of committees, or the proceedings of the Senate during executive session. Moreover, members of Congress are permitted to revise statements which they have made on the floor before publication or the houses themselves may order remarks stricken from the record. Undelivered speeches of Representatives are inserted in the *Record* under "leave to print," even to the spurious (Applause) and (Extended applause) parentheses.[28] Nevertheless, the *Record* affords reasonable assistance to a serious student of the legislative process. If the *Record*, with its twenty to thirty thousand double-columned pages each two years, may be regarded as so voluminous that it is padded, the *Journals* published by the two houses are so abbreviated that they seem skeletal in form. The *Journals* are worth consulting for formal action, but

[27] Before the large volumes appear, individual acts may be printed as "slip-laws." Two volumes of the statutes are prepared: one containing public acts and resolutions; a second, private acts, concurrent resolutions, treaties, and presidential proclamations.

[28] Newspaper and magazine articles, even entire books, may be printed in the *Record* under unanimous consent privilege. Copies of the *Record* in which some congressman's undelivered speech appears are then franked and sent out to his constituents. There has been from time to time considerable criticism of this abuse, but no suggestions for reform have been very cordially received by Congress. In 1937 there was a proposal from the floor of the House of Representatives to restrict the *Record* to genuine debate, which if accepted would have saved $173,000 a year. However, the proposal failed.

they contain so little meat on their bones that they give only a fragmentary notion of what has taken place. The *Congressional Directory* is a convenient annual handbook which includes much pertinent information regarding committees, committee members, biographical records of Senators and Representatives, and so forth. Committee reports are unfortunately not so easily obtainable as these three publications, but they are frequently more important as sources of information than the *Record.* They are usually published as *House* or *Senate Documents* and may be obtained under that guise, although some of them are brought out in limited numbers and after a few years are almost unobtainable.

THE MODERNIZATION OF CONGRESS

Recent Criticism of Congress During the decade preceding 1946 there was a rising tide of criticism of the system under which Congress operated. It was alleged that the President and the administrative departments were organized in such a way as to give effective attention to present-day problems, whereas Congress continued to work under a system drawn up in the last century when public business was far less in both volume and complications. To begin with, the members of Congress tended to ignore these complaints as unfounded, but in 1944 a Special House Committee on Executive Agencies recognized their basis by recommending that action be taken to "modernize" Congress. Shortly thereafter a Joint Committee on the Organization of Congress was set up under the chairmanship of Senator Robert LaFollette. Groups, such as the American Political Science Association and the National Planning Association, have also given consideration to the problem of the organization of Congress and made public certain recommendations as to specific changes.[29]

Joint Committee Recommendations Early in 1946 the Joint Committee on the Organization of Congress reached the point where it was prepared to present its formal recommendations to Congress. The committee found itself unable to reach an agreement on the thorny problems of a substitute for the seniority rule

[29] These and other recommendations have been summarized in a pamphlet "The Organization of Congress," compiled by W. R. Tansill, published by the Government Printing Office, October 20, 1945.

in selecting committee chairmen and the curtailment of the powers of the House Committee on Rules. However, its recommendations covered many items of undoubted significance. It proposed reducing the number of standing committees in the House from 48 to 18 and in the Senate from 33 to 16 and possibly even 14. Each member of Congress would be limited to membership on a single committee. Committee chairmen would be required to report promptly all bills approved by their committees; committee reports would be accompanied by a digest of the bill, reasons for action taken, the national interest involved, and the amount of money if any required. Each committee would be assigned four staff experts exempt from discharge for political reasons; the Legislative Reference Service of the Library of Congress would be expanded substantially to provide additional research facilities for members and committees; and the Office of Legislative Counsel would also receive larger appropriations. Conference committees would be limited to differences in fact between the houses. Every member of Congress would be furnished an $8,000-a-year administrative aide to relieve him of nonlegislative duties, thus freeing members for additional attention to legislation. Legislative riders on appropriation bills would be prohibited; executive hearings on appropriation bills would be abolished. Pressure groups would be required to register at each session with the Senate secretary and the House clerk and also to file itemized quarterly statements of expenditures to influence legislation. Self-rule would be given the District of Columbia, while the federal courts would be authorized to settle claims against the government in order to reduce the demands at present made on Congress.

Other provisions related to an annual audit of all government agencies by the General Accounting Office, an Office of Congressional Personnel to provide a modern personnel system for all service employees of the Capitol, the expansion of the *Congressional Record* to report committee hearings, and the balancing of expenditures and revenue or the clear authorization of an increase in the national debt. Majority and minority policy committees would be set up to furnish leadership in increased measure.

The Reorganization Act of 1946 When Congress finally got around to take action on the proposals of its committee, it

went beyond the point some had anticipated but it failed to deal with certain of the basic problems. Much to the surprise of some observers, it did agree to reduce the number of standing committees from a total of forty-eight to eighteen in the House and from thirty-three to fifteen in the Senate. The significance of this step has been variously assessed. On its surface it seems to go far in coping with the "sprawling, overlapping, and duplicating committee structure," but the proliferation of subcommittees to the number of more than one hundred has counteracted much of the advantage in the eyes of certain members of Congress as well as observers. No attempt was made to deal with the seniority system involved in the selection of committee chairman. Nor did the act seek to improve the basic relationship existing between the legislative and executive branches. Despite proposals to strengthen the leadership within Congress by setting up majority and minority policy committees, little actual advance was made in this direction, though the Senate Republicans did organize a policy committee of their own in 1947.

The reorganization did improve the research facilities available to Congress to some extent, but action of the House in setting up an Office of Coordinator of Information was interpreted by some as an attack on the enlarged Legislative Reference Service and the research staffs employed by some standing committees did not inspire confidence. Though the act sought to coordinate the procedure for handling the taxing and spending powers of Congress, its provisions were virtually ignored by the 1947 Congress and the anticipated "legislative budget" failed to materialize. Because Congress did not get around to provide funds the Comptroller General was unable to analyze federal expenditures or to make reports on waste and extravagance as specified in the act. Some improvement was achieved in the surveillance of executive departments by Congress and in the restrictions on legislative clauses in appropriation measures. Representative A. S. Monroney, co-author of the act, gave Congress a rating of 50 per cent in carrying out the terms of the reorganization act during the first year.[30] Inasmuch as a score of 50 per cent had been given on the original act in terms of the changes needed, a net rating of 25 per cent would seem to be in order for the accomplishments realized in 1947.

[30] See the *New York Times*, August 10, 1947.

Selected Bibliography

Burdette, F. L., *Filibustering in the Senate,* Princeton University Press, Princeton, 1939.

Chamberlain, J. P., *Legislative Processes: National and State,* D. Appleton-Century Company, New York, 1936, Chaps. 6-9, 13.

Dill, C. C., *How Congress Makes Laws,* Ransdell, Inc., Washington, 1939.

Flynn, J. T., *Meet Your Congress,* Doubleday, Doran & Company, Garden City, 1944.

Galloway, George B., *Congress at the Crossroads,* Thomas Y. Crowell Company, New York, 1946.

Herring, E. P., *Group Representation before Congress,* Brookings Institution, Washington, 1929.

Kefauver, Estes, and Jack Levin, *A Twentieth-Century Congress,* Duell, Sloan and Pearce, New York, 1947.

Luce, Robert, *Legislative Procedure,* Houghton Mifflin Company, Boston, 1922.

——, *Legislative Assemblies,* Houghton Mifflin Company, Boston, 1924.

——, *Legislative Principles,* Houghton Mifflin Company, Boston, 1930.

——, *Legislative Problems,* Houghton Mifflin Company, Boston, 1935.

——, *Congress—An Explanation,* Harvard University Press, Cambridge, 1926.

Manual of the United States Senate, Government Printing Office, Washington.

Manual and Digest of the House of Representatives, Government Printing Office, Washington.

McCown, A. C., *The Congressional Conference Committee,* Columbia University Press, New York, 1927.

Nutting, C. B., ed., *Cases and Materials on Legislation,* rev. ed., University of Nebraska Press, Lincoln, 1939.

Office of Price Administration, *The Beginning of O.P.A.,* Government Printing Office, Washington, 1947.

Pepper, G. W., *In the Senate,* University of Pennsylvania Press, Philadelphia, 1930.

——, *Family Quarrels—The President, the Senate, the House,* Baker, Voorhis & Company, New York, 1931.

Pusey, M. J., *Big Government; Can We Control It?,* Harper & Brothers, New York, 1945.

Riddick, F. M., *Congressional Procedure,* Chapman & Grimes, Boston, 1941.

Smith, G. H. E., and F. M. Riddick, *Congress in Action,* National Capitol Publishers, Washington, 1948.

Smith, T. V., *The Legislative Way of Life,* University of Chicago Press, Chicago, 1940.

Tilson, J. Q., *Parliamentary Law and Procedure,* Ransdell, Inc., Washington, 1935.

Walker, Harvey, *Lawmaking in the United States,* The Ronald Press Company, New York, 1934, Chaps. 10, 12-14.

Young, R. A., *This Is Congress,* Alfred A. Knopf, New York, 1943.

20 · *The Federal Courts*

Basis of a Separate Federal Court System There are in the United States two separate systems of courts which to some extent at least parallel each other: the federal courts and the state courts. Everything else being equal, it would, of course, be preferable to have one hierarchy of courts rather than a separate federal judiciary and forty-eight state systems. Certainly there would be greater uniformity than we now have; the time required to take cases through several courts of a state and then to the federal Supreme Court might be cut; and it is possible that economies might make it possible to save some money. But the men of 1787 were convinced that two separate court structures are essential because all these factors above are secondary to the basic consideration: the particular kind of government which we have.

Under a unitary form of government there would be no justification for two separate judicial organizations. However, under the federal plan of government either separate judicial hierarchies must be established or it must be decided which of the governments is to have the courts. If a national court structure were adopted, the states, although they are the bases of the federal form, would be ignored. On the other hand, if the central government had to depend entirely upon state governments to enforce its laws, there would be friction. The delegates, remembering the experience under the Articles of Confederation, recognized the danger and wisely decided to authorize the establishment of a complete system of federal courts alongside the state courts.

JURISDICTION OF THE FEDERAL JUDICIARY

Inasmuch as there had been no national courts under the government set up by the Articles of Confederation, the framers had to blaze a trail in outlining the jurisdiction which the federal courts should have. The disputes that had arisen under the confederation

gave them some guidance; moreover, there were certain fields that were clearly national rather than local in character. On the other hand, other types of cases belonged to a borderland shared by the two governments. Since the Constitution attempted a specific enumeration of the powers of the central government, it was necessary to take great pains in listing the cases that might be brought to federal courts in order that only stipulated cases could be assumed by these tribunals. Two broad categories of cases were finally brought under federal jurisdiction: (1) those which involved certain subject matter, and (2) those which involved specified parties.

Subject Matter One of the arguments in favor of a separate and complete system of federal courts emphasized the lack of uniformity that would attend interpretations of federal laws, treaties, and the Constitution itself if this function were entrusted to the state courts. Therefore, when it was decided to provide for a separate hierarchy of federal courts, it was only natural that the framers should specify certain fields based on subject matter that belonged under the jurisdiction of those courts. Anyone will appreciate the importance of having federal laws applied and interpreted by federal courts. Treaties also are the expression of the will of the national government. While some treaties are not likely to require interpretation and enforcement by the courts of law, it is not uncommon to encounter those that do. Courts of any grade, state or national, may interpret the federal Constitution, but there must be some method of checking inferior courts so that eventually there will be a single authoritative statement of what a clause of the Constitution means. It is obvious that only the federal Supreme Court can act in this capacity. Finally, there are admiralty and maritime cases which arise on the high seas or on the navigable waters of the United States. The states may have an interest in these controversies, but their very nature renders them especially fitting for the consideration of federal tribunals.

Nature of Parties There are other cases that are placed under federal jurisdiction because of the parties involved. Ambassadors, ministers, and consuls of foreign countries are attached to the national government and therefore, even in the absence of international law which ordinarily renders them immune from any liability, they are appropriately placed under the jurisdiction of federal rather than of state courts. Again it would be beneath the

dignity of the United States to be brought into a state court—consequently controversies to which it is a party are brought to federal courts. When private citizens of one state are engaged in litigation with private citizens of another state, there is always a problem of impartial state courts. In important cases of this character it is logical that the assistance of the federal courts should be available if not obligatory. Citizens of the same state who are in legal dispute because of land which they claim under grants from different states also find it difficult to obtain satisfaction from state courts. There are comparatively few such cases now, but they may be brought to federal tribunals. Finally, there are the controversies to which a state is a party. The original Constitution was interpreted by the Supreme Court to mean that even cases brought by private citizens of a state against another state [1] could be handled by federal courts, but the Eleventh Amendment was quickly added to change that provision. At present, therefore, only those cases in which a state is suing or being sued by another state or by the federal government come under this provision.

Exclusive and Concurrent Jurisdiction It is not to be supposed that the cases placed under federal jurisdiction by the Constitution must invariably be brought to those courts. There are, indeed, certain cases in which the federal tribunals do exercise exclusive jurisdiction, but they are not so numerous as those of concurrent authority. The United States does not permit itself to be sued except in its own courts; nor do states sue other states except in the Supreme Court of the United States itself. Suits against ambassadors, ministers, and consuls also are exclusively under jurisdiction of federal courts. Crimes committed against a federal statute, along with patent, bankruptcy, admiralty, and maritime cases, are virtually if not entirely under the exclusive jurisdiction of the federal tribunals. However, when a clause of the federal Constitution or a treaty is in dispute, state courts may rule, although the federal courts have final determination. The most common kind of controversy is a suit of a citizen of one state against a citizen of another state. None of these may be carried to a federal court unless at least $3,000 is involved. Even in amounts exceeding that figure there is concurrent jurisdiction permitting the litigants to decide where they want their cases to be heard.

[1] See *Chisholm* v. *Georgia*, 2 Dallas 419 (1793).

Original, Removal, and Appellate Jurisdiction Cases may be brought to a federal court in three different ways: (1) they may be started there to begin with, (2) they may be removed from a state court, and (3) they may be appealed from a state court. The majority of federal court cases come under the first category. Indeed in the federal district courts which handle the vast majority, there are only the first two possibilities, for these courts have no appellate jurisdiction. It is not uncommon to have a defendant in a case of diverse citizenship ask to have a case removed to a federal court, because he is not satisfied that the state court of the plaintiff will give a fair trial, but most of the cases found on the docket of a federal district court were brought there without recourse to any other court. When cases are removed from a state court, that step must be taken before the decision and ordinarily will occur early in the proceedings. Appeals, as noted below, may be taken under certain circumstances from state tribunals, although never from a lower state court to a lower federal court. Only after a state supreme court has decided a point relating to the federal Constitution, a federal law, or a treaty in a manner which is questionable or has denied a right claimed under the federal Constitution can an appeal be lodged with the Supreme Court of the United States.

THE ACTUAL WORK OF FEDERAL COURTS

The federal courts are heavily burdened with cases of one kind and another. Prior to the efforts of Chief Justice Taft directed at reducing delay, many federal courts were several years behind with their work, which entailed a considerable hardship to those persons and corporations that lost money every day a controversy remained unsettled. There has recently been a slight expansion in the court structure [2] and a considerable addition to the number of district judges.[3] In 1941 provision was made for three law clerks in each circuit to assist district judges upon assignment by the senior circuit judge. This, together with the revision of rules and the supervision of the judicial council.[4] has effected a speeding up of justice.

Types of Civil Cases The civil cases which are entered on the

[2] An additional circuit court of appeals has been added, for example.
[3] A smaller number of circuit court of appeals judges has also been added.
[4] For a detailed treatment of the judicial council, see p. 377.

dockets of federal courts are of three general varieties: (1) cases in law, (2) cases in equity, and (3) admiralty cases.

1. Cases in Law When persons or corporations of diverse citizenship resort to the federal courts, they usually have cases under the first category noted above. At least $3,000 must be at stake and much larger sums are ordinarily involved—even hundreds of thousands or millions of dollars. Civil wrongs, designated "torts," may provoke the dispute; contracts entered into expressly or made by implication may be the basis. These cases all seek monetary damages and are based to a considerable extent upon the common law.

Common Law In so far as Congress has passed statutes relating to cases at law, the federal courts are, of course, bound by those statutes. However, in large numbers of these disputes there is no federal statutory law on the subject and consequently state common law or statutory law must be applied. Common law is one of the significant contributions of England to the modern world. It has been developing there for at least a thousand years and has been so highly regarded that it has been adopted as a legal basis by many other countries. The colonists brought the English common law with them to the New World and it became the basic civil law in all the states but Louisiana, which because of its French antecedents chose the *Code Napoléon*.[5] Inasmuch as local conditions have varied from state to state and the common law is developing rather than static, there are at present forty-seven common laws rather than a single system. That is not to say that there are great basic differences from one state to another, but the details have been influenced by local problems and psychology enough to cause a good deal of variation. This presents difficulties to the federal courts which must decide cases where the common law is the only guide. The rule has long been that a court would apply the common law of the state in which it operated, but diverse citizenship has made that difficult at times because there would be two common laws involved. For some years the federal district courts used the accepted common law where there was no conflict between the common law of the states of the parties to the case. Where there was a contradiction, they used their judgment in working out a compromise. The decisions in these cases were gradu-

[5] Even in Louisiana the common law has influenced the legal system.

ally building up a forty-eighth common law which some predicted might eventually become a system of federal common law. In the 1930's the Supreme Court of the United States put an end to this process when it held that a federal district court must apply the common law of the state in which the act complained of took place.[6]

2. Cases in Equity Although the common law furnishes an adequate remedy in cases where monetary damages suffice, there are others in which the common law is far from satisfactory. In those cases in which common law could not be applied without injustice, it became the practice in England for those affected adversely to ask the king for assistance. Kings, not caring to be bothered personally with such petitions, charged their chancellors with receiving and deciding the pleas. Inasmuch as there was an increasingly large number of these cases, the ministers of the king drew up rules which might be uniformly applied. From this early beginning there developed over several centuries an elaborate body of rules known as "equity." Interestingly enough, equity is strikingly different from common law, despite the fact that both developed side by side in the same environment. Common law has been likened to an old dog which has lost most of its teeth and if it perchance bites will not inflict much damage. Equity is, on the other hand, more drastic in its effect, more expeditious in its procedure, and more intolerant of dilatory tactics. If, after surmounting all of the legal obstacles permitted under common-law procedure, a litigant manages to get a court judgment against one who has violated a contract, he may have won exactly nothing unless it be a moral victory. A judgment which calls for the payment of a certain sum of money avails little or nothing unless it can be

[6] Although federal common law as a system superseding state common law has been denied, the Supreme Court has built up a series of precedents in interstate common law which are still active. In *Kansas* v. *Colorado*, 206 U. S. 46 (1907), the court said: "Yet, whenever . . . the action of one State reaches through the agency of natural laws into the territory of another State, the question of the extent and limitations of the rights of the two States becomes a matter of justifiable dispute between them, and this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them. In other words, through these successive disputes and decisions this court is practically building up what may not improperly be called interstate common law."

enforced and in tens of thousands of cases it never is enforced because the defendant appears to have no property with which to satisfy the judgment. A decree in equity, however, is not to be trifled with, for neglect of it may easily send one to jail for contempt of court.

In equity cases courts proceed by issuing writs, such as those of specific performance and injunction, the first of which orders a positive action while the latter prohibits a certain action. Although in England separate courts originally administered equity rules, both common law and equity are now applied by the same federal courts in the United States. Equity makes little or no use of juries, depends more upon written arguments and evidence than upon public sessions, and is preventive in its aim rather than punitive.

3. Admiralty Cases The third type of civil case over which federal courts take jurisdiction is far less commonplace than the other two. Federal district courts located in the hinterland of the United States are seldom called upon to decide cases in which two ships have collided, a shipper maintains that freight has been ruined, or a master and a crew find it impossible to agree. However, in the district courts located in important shipping centers such as New York, Boston, New Orleans, Los Angeles, San Francisco, Houston, and Seattle, these cases are constantly arising. Special admiralty and maritime rules have grown up over a period of more than two thousand years. They may be modified by Congress or interpreted by the courts, but they are more international than national in character.

Bankruptcy Cases One special category of civil cases deserves special mention because it occupies so much of the time and energy of federal district courts. Congress has enacted elaborate laws relating to bankruptcy and has charged the federal district courts with administering them. Therefore, when an individual or corporation, either on its own initiative or upon the petition of creditors, is thrown into bankruptcy, a federal district court not only must authorize the bankruptcy to begin with, but also must supervise the subsequent steps. In individual cases it is common to liquidate the assets and pay off the creditors, in so far as the assets will permit, under the eye of the court. However, great corporations, particularly railroads and holding companies, often cannot

be dealt with so simply. The federal district court appoints receivers who take over the property and attempt to manage it efficiently enough to restore a condition of solvency.

Types of Criminal Cases under Federal Jurisdiction Most of the criminal field is occupied by the states; hence homicides, burglaries, and other serious offenses ordinarily are tried by state courts. However, Congress has the authority to enact statutes which deal with the protection of federal property, including the mails, interstate acts of a criminal nature, the safeguarding of the currency and banking systems, treason, offenses against international law, and offenses committed on the high seas, in the District of Columbia, on federal property, or in a territory. Some of these categories, treason for example, involve few offenses and hence do not bring many cases each year.

The transportation across state lines of stolen automobiles, women for immoral purposes, loot obtained from a bank, and kidnapped persons now carry heavy federal penalties. Counterfeiting of metal or paper money is also one of the more serious offenses against the federal government. The robbing of national or federal reserve banks either by employees or outside criminals is a federal offense. Smugglers, bootleggers of untaxed liquor, dope peddlers, violators of the pure food laws, and related offenders account for many of the cases which fill the dockets of federal courts. Finally, there are the many cases involving misuse of the mails. There are always persons who attempt to use the mails for circulating obscene literature or pornographic pictures. Others seek to obtain money under false pretenses by sending out alluring promises of inordinate returns on the investment of a few dollars.

Criminal Procedure The court procedure in criminal cases is regulated both by provisions of the Constitution [7] and by rules which the Supreme Court drafted in 1945 after Congress had authorized it to establish uniform practice in all federal district courts. A trial by a jury made up of one's peers must be accorded in serious cases, although the majority of accused persons now waive the jury trial in favor of a trial by the presiding judge. Counsel must be furnished to those who are unable to hire their own; opportunity must be given to consult counsel; public assistance must be forthcoming for the summoning of witnesses. The

[7] For a more detailed discussion of these, see Chap. 7.

accused must be confronted by the witnesses against him, cannot be compelled to take the witness stand, and must be given a speedy and fair trial. Reasonable bail must be permitted except in the most serious crimes, while cruel and unusual punishment is banned.

LOWER FEDERAL COURTS

Federal District Courts The area of the United States is divided into some ninety districts [8] which serve as bases for the organization of the federal district courts. Every state has at least a single district; the more populous states include two or three or in a few cases even more districts. Ordinarily state lines are observed in setting up the areas of district courts' jurisdiction. These courts have single-judge benches except when injunctions are sought to prevent the enforcement of federal or state laws alleged to be unconstitutional.[9] In those districts in which large cities are situated the amount of work which comes to these courts is large and it is consequently necessary to assign more than one judge and to have several sessions of the court going on simultaneously. The district judges now exceed 165 in number and are appointed by the President with the consent of the Senate for an indefinite tenure, pending good behavior.

Work of District Courts The great bulk of cases which come under federal jurisdiction are dealt with by the federal district courts. Thousands of bankruptcy cases are always pending in them.[10] The many civil cases based on diverse citizenship require a great deal of attention. Prosecutions for misuse of the mails, theft of federal property, violations of the pure food, banking, and counterfeiting laws, transporting of stolen automobiles across state lines, as well as a good many other offenses originate here. These are the only federal courts which employ grand juries and trial juries.[11] An appeal may be taken under certain circumstances to the circuit courts of appeals—in a few instances to the Supreme Court—but

[8] Alaska, Puerto Rico, Hawaii, the Virgin Islands, and the Panama Canal Zone as well as the continental United States have district courts.

[9] The emasculated court bill of 1937 made this provision which really combines the district and the circuit court stages into a single hearing.

[10] Bankruptcy cases were so numerous at one time that they outnumbered all other cases, both criminal and civil.

[11] Trial juries are commonplace, but there is a distinct trend in the direction of waiving this right and requesting the judge to act on facts as well as on law.

the great majority of cases are settled finally in the district courts. The congestion of the district court dockets has been a problem for many years. Pretrial procedure, looking toward reducing the delay incident to crowded court dockets, is now in general use by the district courts. Instead of going ahead with every case which comes to their attention the district courts now attempt to weed out as many as possible before the trial stage. In certain instances it is possible to arrange a settlement out of court and that is now being done on a considerable scale under the auspices of the courts themselves.

Circuit Courts of Appeal Immediately above the district courts in the judicial hierarchy stand the circuit courts of appeals. The United States and its territories are divided into ten areas, over each of which is placed a circuit court of appeals. Some of these areas—for example, the Rocky Mountain states—cover tremendous territories, stretching for hundreds and even thousands of miles, while others, such as New England, are compact in size. These courts are multiple-bench courts, having from two to six judges assigned to them, depending upon the pressure of business.[12] At least two judges must sit in a single case, though three is the common number.

Work of the Circuit Courts of Appeals The circuit courts of appeals, as their titles indicate, have no original jurisdiction and hear only appeals from the district courts and from quasi-judicial administrative agencies of the federal government. The scope of these courts was greatly enlarged by Congress in 1925 as a result of the efforts of Chief Justice Taft to speed up the administration of federal justice. Inasmuch as the Supreme Court had more than it could dispose of promptly, it was decided to confer broad authority on the circuit courts of appeals in suits between aliens and citizens, between citizens of different states when there was no federal question at stake, and in cases arising from the patent, copyright, admiralty, bankruptcy, revenue, and criminal laws of the United States when not more than $1,000 was involved.

Judicial Review of Quasi-judicial Administrative Establishments From time to time Congress has endowed many agencies in the administrative branch of the government with quasi-judicial

[12] District judges sometimes are called in to sit with the circuit judges if the occasion demands it.

power. Such organizations as the Interstate Commerce Commission, the Federal Trade Commission, the National Labor Relations Board, and the Federal Power Commission, created as they were to handle special problems from beginning to end, were given authority not only to make regulations and prosecute infractions of them but also to assume the functions of a court in those cases. At the present time these boards and commissions occupy much the same positions in the judicial hierarchy as district courts in that they have final decision[13] in regard to facts, but their rulings on law may be revised by circuit courts of appeals.

The Judicial Council In 1922 Congress passed a law which among other things provided for a judicial council to be composed of the senior judges of the ten circuit courts of appeals or colleagues designated by them and to be headed by the Chief Justice of the Supreme Court. This council was to hold annual sessions; to it all federal district judges were required to make annual reports of a somewhat detailed character which were to be used as a basis for drawing up recommendations to Congress on the one hand and the courts themselves on the other. Carrying out this assignment, the judicial council has requested Congress to authorize the creation of additional district and circuit judgeships, either on a permanent or a temporary basis and has pointed out necessary changes in the judicial system as a whole. Also it has transmitted suggestions to the various lower courts in regard to the conduct of business and the clearing of their dockets. The council enjoys some jurisdiction in transferring judges temporarily from courts where there are not a great many cases to courts which are heavily burdened and far behind in their work, though the judicial council can do little more than ask judges to volunteer for such extra labor.

Administrative Office of the United States Courts The judicial council meets only once a year and must necessarily confine itself largely to recommending general changes. There is in addition the problem of supervising the lower federal courts in matters of routine. An Administrative Office of the United States Courts, immediately responsible to the Chief Justice, has recently been established in the Supreme Court building in Washington. The work of this agency is less well known and less spectacular than the labors

[13] This authority is qualified by the requirement that the findings of facts are supported by the evidence.

of the judicial council, but it is, nevertheless, fairly important in bringing about a reasonable amount of uniformity in the lower courts.[14]

Special Courts The district, circuit, and supreme courts are called "constitutional" courts because their creation was contemplated by the Constitution, although their actual establishment was left up to Congress. In addition to these tribunals which constitute what the man in the street considers the federal court system, it has been necessary from time to time to set up other courts for special purposes. These are known as "legislative" courts [15] because they have resulted entirely from congressional action and may be regulated by Congress without the restrictions in regard to such matters as tenure and salary reductions that apply to the "constitutional" courts. It may be added that the establishment of these courts is interpreted to be within the province of Congress because of authority implied from the taxing, patent, appropriation, commerce, and other powers specifically granted by the Constitution.

Court of Claims Perhaps the most important of these special courts is the Court of Claims which was created by Congress as early as 1855. The United States as a sovereign power cannot be sued without its own consent; yet, as a matter of fairness, some provision must be made for considering the claims of those who allege that they have suffered injury as a result of federal action. Special bills providing for the alleviation of distress caused by some agency of the federal government may be introduced in Congress —and are brought to that body more or less regularly—but Congress has too much other work to do to give much attention to them. Hence the Court of Claims is charged with hearing those cases against the government that Congress specifies—it should be noted that not all claims may be heard by this court.[16] This court has five judges, appointed by the President with the consent of the Senate for indefinite terms subject to good behavior, and holds

[14] For additional discussion of the work of this office, see the *Second Annual Report of the Director of the Administrative Office of the United States Courts,* Washington, 1941.

[15] For a good discussion of these courts, see W. G. Katz, "Federal Legislative Courts," *Harvard Law Review,* Vol. XLIII, pp. 894-924, April, 1930.

[16] For example, Congress specified that claims resulting from the devaluation of the dollar and the outlawing of "gold clauses" in contracts in 1934 should not be heard by this court.

regular sessions in Washington. It gives its attention to contractual claims brought by persons or corporations against the federal government or referred to the court by an administrative agency or Congress. Unlike most other courts, the Court of Claims has no authority to render judgments. It contents itself with recommending the payment of certain amounts of money to litigants who impress it; Congress then has to appropriate the money before the claims can be paid.

District of Columbia Courts Acting under its authority over the seat of the national government Congress has created a complete set of courts in the District of Columbia: a court of appeals, a district court (which corresponds to a federal district court), a municipal court, a police court, and a juvenile court. Most of these are of interest only to the residents of the District of Columbia, but the court of appeals is of wider importance because it hears appeals at times from the rulings of the administrative commissions.[17]

Other Special Courts A United States Customs Court, consisting of a chief justice and nine associate justices, has been set up to pass on controversies arising out of duties to be paid by importers. Likewise, there has been established a Tax Court of the United States which hears allegations of taxpayers that they have been forced to pay higher taxes than are justifiable under the law. In 1942 a United States Emergency Court of Appeals came into being under the Price Control Act. A Court of Customs and Patent Appeals hears cases which are carried to it from the Customs Court referred to above and from the Commissioner of Patents. This court has final jurisdiction in most instances, although in a few matters there may be an appeal to the Supreme Court.

THE SUPREME COURT

Constitutional Basis The Supreme Court is the only court specifically provided for by the framers in 1787 and even its structure is not outlined in any detail. The Constitution merely states that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during

[17] This court is a constitutional court.

good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." Within the broad limits of this grant Congress may freely exercise its discretion.

Congressional Acts Among the first legislation enacted by the new Congress in 1789 was the monumental Judiciary Act which set up a number of federal courts and defined their powers. This act specified that the Supreme Court should consist of a Chief Justice and five associate justices, who in addition to their duties in connection with the highest tribunal in the court system should participate in the work of the lower federal courts by going on circuit through the various parts of the country. In 1801 Congress saw fit to decrease the size of the Supreme Court to five; in 1807 it was enlarged to seven; in 1837 provision was made for nine seats; in 1863 its size reached a high-water mark of ten; in 1866 there was a drastic cut to seven justices; and since 1869 there have been nine members of the court.

Early History Very shortly after Congress provided for the organization of the Supreme Court, President Washington, in 1789, appointed John Jay and five associate justices to the bench. During the early years there was little for them to do. Only a modicum of prestige was attached to the court during this period and justices were known to surrender their seats to accept positions in state courts. In 1795 John Jay resigned to undertake displomatic service for the United States. He was followed as Chief Justice by John Rutledge who, borne down by ill-health, served only during 1795-1796 and was never confirmed by the Senate. Then Oliver Ellsworth assumed the post, presiding over the court until 1800.

The Appointment of Marshall Shortly before the Federalists reluctantly turned the government over to their opponents, President Adams, in 1801, appointed John Marshall as Chief Justice. At the time, this action on the part of a retiring Federalist seemed unlikely to add to the general strength of the Supreme Court, for it was regarded by President Jefferson and his associates as little short of an insult. Consequently, the size of the court was reduced to five; impeachment proceedings were started against Justice Samuel Chase, which had they succeeded would doubtless have been extended to include other members of the court; finally, President Jefferson and his fellow officers let it be generally known that

they held the Supreme Court almost (if not absolutely) unworthy of respect. For a period of something like a year the court did not meet at all and then it convened only to face the open hostility of the executive and the legislative branches of the government.

Contribution of Marshall John Marshall had served in the Revolutionary Army, in the Government of Virginia, and as Secretary of State under President Adams. He had achieved a more than local reputation as a shrewd attorney, but there was comparatively little in his record to indicate that he would rescue the Supreme Court from its position of obscurity and even jeopardy and transform it into an agency of commanding effectiveness and influence. Yet that is what he managed to achieve during the almost thirty-five years of his chief justiceship. He is particularly important because he laid down the broad outlines of a constitutional system which has continued with modifications to this day. Despite his attachment to his native state Virginia, the basic premise of Marshall's credo was that the national government must be given adequate authority. He wanted a strong government hampered neither by the petty jealousies of the states nor by a strict, literal interpretation of the Constitution. Probably the most famous and oft-quoted statement expressing his fundamental belief is the dictum from *McCulloch* v. *Maryland* concerning the doctrine of implied powers: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited [to the national government], but consist with the letter and spirit of the Constitution, are constitutional." [18]

Roger B. Taney Marshall [19] was succeeded as Chief Justice by Roger B. Taney, who served during the years 1836-1864. Perhaps largely because of his association with the Dred Scott case,[20] it was long the accepted belief that despite his lengthy service he did little in the way of adding to the brilliant achievements of his predecessor. However, the careful investigations recently completed by reputable scholars indicate that Justice Taney has been a most

[18] *McCulloch* v. *Maryland*, 4 Wheaton 316 (1819).

[19] The full-dress biography of Marshall was prepared by Albert J. Beveridge in four volumes. See *Life of John Marshall*, 4 vols., Houghton Mifflin Company, Boston, 1916-1918.

[20] Reported in 19 Howard 393. Decided in 1857 and declaring that Negroes could not be citizens.

underrated and misunderstood Chief Justice.[21] His contribution to American constitutional development followed along the general lines which Marshall had laid down but carried those principles forward quite materially. By the end of his career on the court the doctrine of judicial supremacy had been pretty firmly established as an integral part of the constitutional system of the United States.

The Years 1864-1910 During the years from the Civil War to the present century the role of the Supreme Court was important, but the developments were in general less spectacular than during the earlier period of Marshall and Taney. Salmon P. Chase, Morrison R. Waite, and Melville W. Fuller presided over the court during the period 1864-1910 with reasonable competence, but few would place them in the Marshall-Taney class.

Developments during 1910-1936 It is perhaps fair to state that the Supreme Court reached its zenith during the second and third decades of the twentieth century.[22] Its role as guardian of the Constitution was not seriously challenged. It was during this period that Chief Justice Taft put through the important reforms that made it possible for the Supreme Court to dispose of its business with a minimum of delay.[23] These were the years characterized by such distinguished justices as Oliver W. Holmes, Louis D. Brandeis, Benjamin N. Cardozo, William H. Taft, and Charles E. Hughes. When the Democrats under the leadership of President Roosevelt sought to have the national government cope with the problems of agricultural adjustment, industrial recovery, and business regulation incident to the depression, the Supreme Court declared their efforts to be in conflict with the Constitution and hence null and void. Public opinion turned from support of the court to backing of the President, with the result that criticism aimed at the court became intense and bitter. It was argued that the Supreme

[21] See C. B. Swisher, *Roger B. Taney*, The Macmillan Company, New York, 1935.

[22] Professor Corwin writes of this period as follows: "The last period is the present; it is that of *Judicial Review* pure and simple. The Court, as heir to the accumulated doctrines of its predecessors, now finds itself in possession of such a variety of instruments of constitutional exegesis that it is able to achieve almost any result in the field of constitutional interpretation which it considers desirable." See *The Twilight of the Supreme Court*, Yale University Press, New Haven, 1934, p. 181.

[23] The court had been something like three years in arrears.

Court was dominated by the vested interests, that it prevented the government from meeting the crying needs of the 1930's, that its justices were "nine old men" who were senile, infirm, and generally incapable of performing their duties.[24] President Roosevelt publicly denounced the court, consigning it with other of his opponents to the "horse-and-buggy days."

The Reorganization Bill of 1937 Early in 1937, after he had been overwhelmingly re-elected President, Franklin D. Roosevelt without warning sent to Congress a bill which would have brought about important changes in the Supreme Court as well as in the entire federal judiciary. The controversial section of the bill involved the addition of new judgeships for every judge who did not retire within six months after reaching the age of seventy years; in the case of the Supreme Court a maximum size including old and new justices of fifteen was set. It is probable that even the President and his closest advisers had little notion of the great excitement which would be generated by this proposal. For some time it seemed likely that Congress, which had followed the dictates of the President so obediently since 1933, would pass the bill, but the pressure from the country convinced Congress that haste should not be resorted to. The Senate Judiciary Committee finally voted to report adversely on the bill by a margin of ten to eight.

The Compromise Act Nevertheless, the battle was not entirely lost by the administration forces, for in August, 1937, a bill was signed by the President which, although not enlarging the personnel of the federal courts, expedited appeals on constitutional questions. Under this act the Department of Justice is permitted to appear in the lower courts to defend congressional statutes, the district and circuit court hearings of cases involving important constitutional questions are combined, and injunctions intended to hold up the application of federal laws are safeguarded.

Events since 1937 Ironically enough, although President Roosevelt lost his fight to reform the court by congressional action, fate then permitted him to reform it by appointment. The retirement of several conservative justices and the death of others enabled the President to name seven new justices. It is not surprising that these appointments were given to men who were known to sym-

[24] See Drew Pearson and Robert Allen, *Nine Old Men*, Doubleday, Doran & Company, New York, 1936.

pathize with the administration's desire for increased federal powers, although in the case of the appointment of Harlan F. Stone as Chief Justice, President Roosevelt advanced an associate justice appointed by President Coolidge.[25] The results have been only partially as expected. Certain liberal legislation has been upheld and substitutes for laws declared unconstitutional during the years 1933-1936 have been found valid. But the new justices have by no means always presented a united front, particularly on narrow points of law.

Present Composition The Supreme Court is now made up of a Chief Justice and eight Associate Justices who are appointed by the President with the consent of the Senate for an indefinite term pending good behavior. Retirement on full pay is permitted at seventy if a justice has served ten years. Appointees have ordinarily been well along in their fifties, while the average age of the members of the bench has recently usually been over sixty and sometimes has approached seventy. It is the custom to include men of both political faiths on the bench of the Supreme Court, although active participation in politics has not been regarded with favor during recent years. Geographical distribution enters to some extent into the selection of justices, but it is scarcely of first-rate significance. The Chief Justice is paid an annual salary of $25,500 and the associate justices $500 less. These are among the highest salaries paid public officials in the United States.

The Supreme Court Building Considering its influence in the government, it is almost incredible that for most of its one hundred and fifty-odd years the Supreme Court has held its sessions in spare corners, so to speak. For a fairly long period the court met in the basement of the Capitol building; then for more than seventy years it had the use of the incommodious old Senate chamber. It was only after a great deal of discussion that Congress authorized the construction of a Supreme Court building during the Hoover administration. Once committed to the plan, Congress decided to give the court the very best and appropriated money for a building that has sometimes been described as the most costly public building ever constructed in the world, considering its size. Its exterior of white marble and its classical lines make it stand out from its surroundings. Within there is a great central hall and corridor, also of marble, the magnificent Supreme Court chamber

[25] Justice Stone had had a quite liberal point of view, however.

with marble pillars and red velvet curtains, library quarters, conference rooms, offices, restaurants, and a press and telegraph room. There are those who consider the general effect of the interior cold, but the fine wood paneling in the conference and certain other rooms does something to mitigate such an impression.

Sessions The Supreme Court ordinarily begins its formal sessions in October and adjourns for the summer in May or June, thus setting aside a period of some four months when it does not convene at all. Even during the fall and winter months it takes frequent recesses of two or three weeks. Instead of nine or ten o'clock in the morning, the hour of twelve has long been the accepted time for beginning a sitting. The lengthy summer period, the numerous recesses during the remainder of the year, and the late hour of opening the court, lead some people to conclude that the Supreme Court has very little to do or at least carries on its work with a maximum of leisure. In reality it is not possible to measure the industry of the court in terms of formal sessions, for much, probably most, of the work is carried on outside of these formal sittings. During the time when it is not recessing the Supreme Court meets in formal session Monday through Friday of every week. Monday is known as "decision day" because the court ordinarily announces its decisions and reads its orders on that day. On Saturday the justices meet privately in the morning for a conference on the cases which they have heard during the preceding days.

A Formal Sitting Promptly at high noon the justices of the court in their somber black silk gowns, led by the Chief Justice, file into the courtroom through their private entrance and take their places at the bench which dominates that chamber. The justices sit in strict order according to seniority, with the Chief Justice in the center and the eight associate justices arranged four on either side—the two newest members occupying the seats at the extreme right and left. After any preliminaries have been disposed of, including the admittance of new members to the bar of the court, the court proceeds promptly to the consideration of the cases which it has agreed to hear. In contrast to the rank and file of courts in the United States this court does not permit long-drawn-out arguments from attorneys, the introduction of irrelevant material, or eloquent oratory. Counsel have been informed beforehand as to how much time will be permitted for argument and they are

expected to confine themselves strictly to that space. Inasmuch as most of the material is included in the printed record which has to be submitted to the court before the case can come up for hearing, the oral arguments are less comprehensive and detailed than they might be. Attorneys take the opportunity of summarizing the points which they consider significant, while the justices use this as the occasion for putting questions to the attorneys in regard to aspects of the case which are not entirely clear. At two o'clock the court halts the proceedings for lunch and at four-thirty adjournment for the day is the rule.

Saturday Conferences The Saturday morning conferences of the justices are carried on in the privacy of the conference room, with the result that considerable mystery surrounds what goes on. It seems probable that something depends upon the time, for it is unlikely that nine men as ripe in years and as successful in human affairs as the Supreme Court justices would allow themselves to become the creatures of petty regulations. Apparently considerable informality characterizes these conferences which are held around a large table, with the Chief Justice at one end. Various members of the court express themselves on the case which is being discussed and an attempt is made to arrive at a common agreement both as to decision and reasons therefor. Chief Justice Hughes, replying to questions of a small group which he received in the conference room in 1940, admitted that the discussion on points of law was frequently vigorous, with disagreement not uncommon, but he was quick to add that the personal relations of the justices were not affected by differences of opinion on legal questions.[26]

Assigning of Opinions It has sometimes been assumed that the Chief Justice exercised wide freedom in appointing colleagues to prepare opinions which contain the reasons for a certain decision in a case and that he often seized on the most important cases for himself.[27] On the occasion referred to above, Chief Justice Hughes took issue with this assumption and asserted that the role of the Chief Justice in such a matter was far less than many imagine. He reminded his visitors that the Chief Justice has nothing to do with

[26] This statement was made to the 1940 Institute of Government sponsored by the National Institute of Public Affairs and the United States Office of Education.

[27] Chief Justice Marshall is pointed to as an example of this practice.

designating the writer of the majority opinion in those cases in which he himself belongs to the ranks of dissenting justices. Moreover, he declared that even in those instances where the Chief Justice agrees with the majority of his colleagues he ordinarily has little leeway in naming the particular justice who will prepare the opinion, for as a rule one of the justices will advance a line of reasoning which will impress the other judges as logical and sound. It is customary for the Chief Justice to assign this justice the task of preparing the opinion, unless the latter be unusually burdened already, in ill health, or otherwise ruled out.

Decision of Majority Vote The Supreme Court arrives at decisions by simple majority vote, with a minimum of six justices required as a quorum. On these occasions when there is a tie because of the lack of a full bench the case will be reargued, or if there is no rehearing, the decision of the lower court will be upheld. This requirement leads to the five-to-four splits of the court which have occasioned not a little concern to some observers, who point out that not much confidence can be put in a decision when the judges themselves are so evenly divided. Prior to 1934 there had been comparatively few instances of such a split in the court—only about a dozen altogether which involved important points of law, or an average of less than one every ten years. Then in a brief period the court handed down a number of important decisions by five-to-four votes.[28] Despite the new court personnel, sharply divided decisions are by no means uncommon, while dissents in general have reached an all-time high. In 1943-1944, for example, eighty out of 137 cases in which opinions were prepared involved dissents and nineteen of these were four-to-five or four-to-three splits. The percentage of nonunanimous cases rose from eight in 1925 to sixteen in 1935 and from there to twenty-eight in 1940 and fifty-eight in 1943.[29] However, it should be noted that recent dissents have usually involved narrow points of law rather than broad, basic principles as earlier.

[28] Among these may be cited: *Perry* v. *United States,* 294 U. S. 336 (1935); *R. R. Retirement Board* v. *Alton R. R.,* 295 U. S. 330 (1935); *Carter* v. *Carter Coal Co.,* 298 U. S. 238 (1936); and *Ashton* v. *Cameron County Water Improvement Dist. No. 1,* 298 U. S. 813 (1936).

[29] For a more detailed discussion of this matter, see C. H. Pritchett, "Dissent on the Supreme Court," *American Political Science Review,* Vol. XXXIX, pp. 42-54, February, 1945.

Opinions and Reports It has been noted that the Supreme Court not only decides cases but that it prepares opinions which explain why it has decided exactly as it has. Over a period of years these opinions may be regarded as of greater importance than the decisions themselves. Decisions have to do with questions which are often of immediate rather than long-range import, whereas the opinions may be so closely reasoned and cover such ground that they will be referred to again and again by the court in future cases. Moreover, the opinions frequently include *obiter dicta*—or supplementary statements on legal points—which may be made the basis for subsequent action by the court. While not written for popular consumption and couched in words that may seem technical to those not familiar with legal terms, the opinions of Chief Justice Marshall, Justice Holmes, Justice Cardozo, and certain other judges are striking examples of fine writing, impressive clarity, and logical organization. Dissenting justices frequently submit dissenting opinions which set forth the reasons for their disagreement with the majority of the court. Concurring opinions occasionally appear when justices agree with their colleagues as to decision but not as to basic reasoning. Eventually the opinions are published in volumes known as *United States Reports* which appear at the rate of two or three each year from the Government Printing Office and are to be found on file in various libraries.[30]

Original Jurisdiction In two types of cases the Supreme Court receives original jurisdiction from the Constitution and hence considers cases which have not been appealed from lower federal or from state supreme courts. One of these categories involves cases which have to do with the ministers and ambassadors of foreign countries in the United States. Inasmuch as these officials are not subject to the jurisdiction of American courts under international law and diplomatic usage, few cases of this sort ever arise. The second type of case is that in which two or more states are engaged in controversy, the United States is suing a state, or the United States is being sued by a state or states. These cases are not very

[30] Before 1882 the reports of the Supreme Court were published by the clerks of the court and bore their names; thus there were four volumes of Dallas, nine of Cranch, twelve of Wheaton, sixteen of Peters, twenty-four of Howard, and so forth.

numerous, although at any time several of them are usually to be found on the docket of the Supreme Court.[31]

Appellate Jurisdiction The great majority of cases that come to the Supreme Court are appealed to that court from the highest state courts or from lower federal courts. At different periods in the history of the United States the exact extent of appellate jurisdiction has varied, but there has been a general trend in the direction of cutting it down. At present only two varieties of cases may be carried as a matter of right beyond the highest state court or the circuit court of appeals in the federal system: (1) where it is asserted that a right or provision of the national Constitution, treaties, or statutes has been denied or ignored, and (2) where a state law or a provision of a state constitution is alleged to conflict with the national Constitution, treaties made under the authority thereof, or laws passed in pursuance thereof.

1. *Cases Arising out of the Federal Constitution and Laws* Cases in which it is maintained that some right or provision of the federal Constitution, treaties, or laws has been denied or transcended come in considerable numbers to the Supreme Court and are frequently of far-reaching importance. Many citizens apparently are of the opinion that the chief pastime of the Supreme Court through the years has been that of throwing out acts of Congress. Actually the court record is one of restraint, at least on the basis of numbers. Prior to 1934 approximately sixty acts of Congress had been thrown out by the Supreme Court—or an average of less than one every two years. During the period beginning in 1934 the court cast aside its restraint to some extent and within a few months declared quite a number of congressional statutes unconstitutional; but even so, the total number now approximates only seventy—or still an average of less than one every two years, basing the calculation on the more than 150 years of the history of the republic.[32]

2. *Cases Arising out of State Acts* The number of cases

[31] Indiana, Kentucky, Oklahoma, and Texas have recently argued over boundaries.

[32] For a list of these statutes as of 1937 when the rate of court vetoes had subsided to its old level, see *Congressional Digest*, Vol. XVI, p. 75, 1937. A very good discussion of this topic will be found in C. G. Haines, *The Doctrine of Judicial Supremacy*, rev. ed., University of California Press, Berkeley, 1932, pp. 541-572. He lists sixty cases during the years 1792-1928.

arising out of alleged conflict between state action and the federal Constitution, treaties, or laws is also large. Many more state laws have been declared invalid by the Supreme Court than might be supposed by a casual observer, for most instances of this character receive far less publicity than corresponding action involving congressional statutes. Altogether, the total effect of these decisions has been very great, particularly in wearing down the scope of state authority and in the enlargement of federal powers.

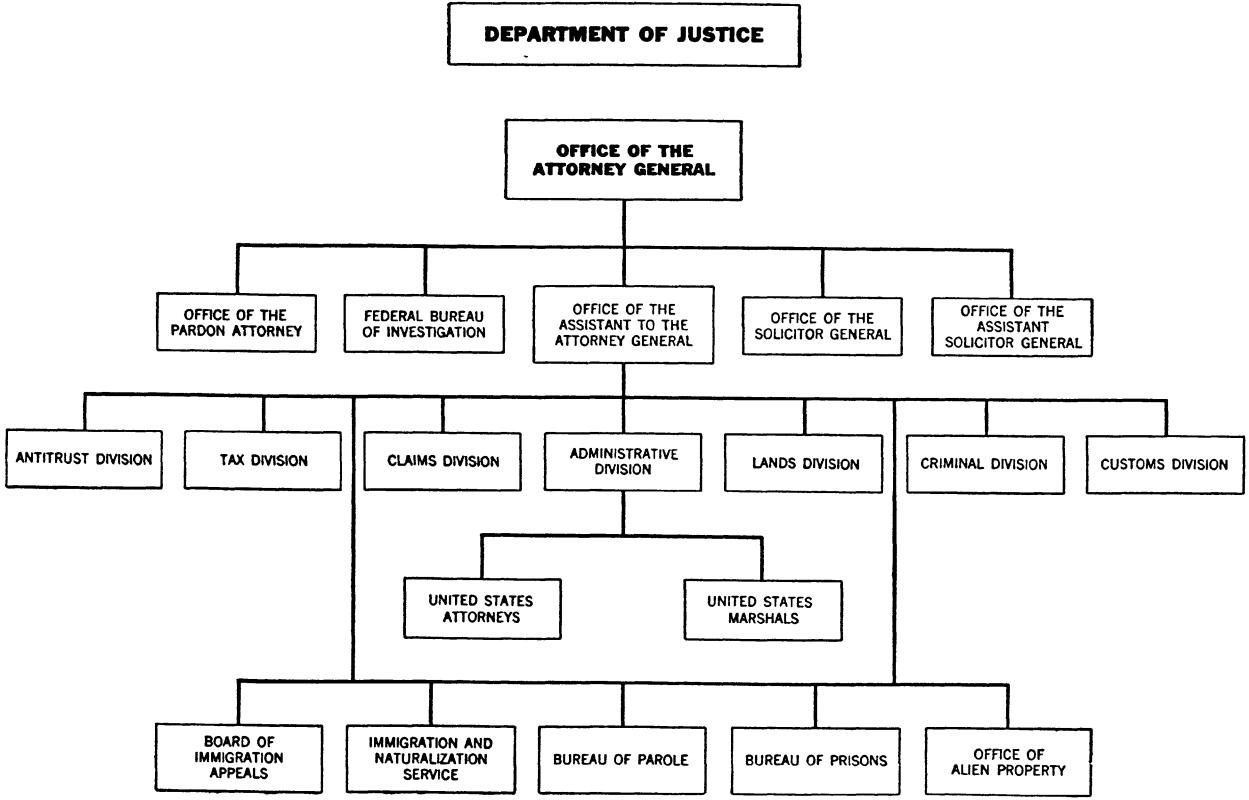
Limitations in Regard to Appeals Those persons who desire to carry their cases to the Supreme Court after they have been started in state courts must exhaust every state remedy before they take that step. In other words, the Supreme Court of the United States will not hear cases that come directly from the lower and intermediate state tribunals; it must be shown that the highest court in a state has denied the right sought or justified the error complained of, unless the Supreme Court desires to call a case up by *certiorari*. Nor will the Supreme Court take cases which do not involve those directly affected by state or federal statutes. This, of course, means that the court passes only on those acts which come to it in connection with cases and then only those on sections or aspects of the acts which are necessary to an examination and decision of the case. Hence, it is sometimes several years before the Supreme Court has occasion to pass on a controversial statute. Advisory opinions are not rendered by the federal Supreme Court to the legislative and the executive branches, although it is not uncommon for state supreme courts to exercise such a function.

THE DEPARTMENT OF JUSTICE

The Department of Justice is, of course, not a court but an administrative department. However, many of its functions relate to the various federal courts and to the administration of federal justice. From the very beginning the United States had an Attorney General, but it was not until 1870 that a Department of Justice was finally provided to handle the increasingly large volume of governmental legal business.

General Organization The Department of Justice[83] has at

[83] For a detailed treatment of the work of this department, see H. S. Cummings and Carl McFarland, *Federal Justice*, The Macmillan Company, New York, 1937.



U.S. Government Manual.

its head the Attorney General who is a member of the President's cabinet. In addition to giving advice, as a cabinet member, to the chief executive and generally overseeing the Department of Justice, the Attorney General heads a division of the department which is charged with furnishing legal opinions on questions which the President and the heads of the executive departments submit to him.[34] Detailed advice on points of law is given by legal sections attached to virtually all of the departments and even to agencies, such as the Maritime Commission. These legal counselors have their offices in the buildings of the agencies which they advise and are for most purposes a part of those departments, but in theory they are a part of the Department of Justice. Seven assistant attorneys-general are provided as aides to the Attorney General, one to have general oversight over the department and six others to perform special duties.

Subdivisions Attached to the Department of Justice is the office of the Solicitor General, which is primarily concerned with representing the federal government in the Supreme Court. Although this office may permit the legal counsel of the several departments to prepare and present cases involving their departments before the Supreme Court. frequently the actual presentation is handled by the Solicitor General himself or by his assistants. One of the subdivisions of the Department of Justice devotes itself to the enforcement of the antitrust laws. Another division supervises the work of the federal district attorneys and marshals in the ninety-odd district courts. Finally, there is the Federal Bureau of Investigation which has recently received unusual publicity.

Selected Bibliography

American Law Institute, *A Study of the Business of the Federal Courts,* The Institute, Philadelphia, 1934.

Baldwin, S. E., *The American Judiciary,* D. Appleton-Century Company, New York, 1905.

Callender, C. N., *American Courts,* McGraw-Hill Book Company, New York, 1927.

Cardozo, B. N., *The Nature of the Judicial Process,* Yale University Press, New Haven, 1921.

[34] These are published in a series of volumes known as *Opinions of the Attorney General.*

Carr, R. K., *The Supreme Court and Judicial Review*, Farrar & Rinehart, New York, 1941.

Claybrook, J. N., *Federal Courts*, University of Virginia Press, Charlottesville, 1928.

Corwin, E. S., *The Twilight of the Supreme Court*, Yale University Press, New Haven, 1934.

Cummings, H. S., and Carl McFarland, *Federal Justice*, The Macmillan Company, New York, 1937.

Curtis, C. P., *Lions under the Throne*, Houghton Mifflin Company, Boston, 1947.

Cushman, Robert E., ed., "Ten Years of the Supreme Court: 1937-1947," *American Political Science Review*, Vol. XLI, pp. 1142-1181, December, 1947, and Vol. XLII, pp. 32-67, February, 1948.

Ewing, Cortez A. M., *The Judges of the Supreme Court, 1789-1937*, University of Minnesota, Minneapolis, 1938.

Fairman, Charles, *American Constitutional Decisions*, Henry Holt & Company, New York, 1948.

Frankfurter, Felix, and James M. Landis, *The Business of the Supreme Court*, The Macmillan Company, New York, 1934.

Gelhorn, Walter, *Administrative Law*, Foundation Press, Chicago, 1941.

Gray, J. C., *The Nature and Sources of Law*, rev. ed., The Macmillan Company, New York, 1921.

Haines, Charles G., *The American Doctrine of Judicial Supremacy*, rev. ed., University of California Press, Berkeley, 1932.

—, *The Role of the Supreme Court in American Government and Politics 1789-1835*, University of California Press, Berkeley, 1944.

Harris, R. S., *The Judicial Power of the United States*, Louisiana State University Press, Baton Rouge, 1940.

Hughes, Charles E., *Supreme Court of the United States*, Columbia University Press, New York, 1928.

Jackson, Robert, *Struggle for Judicial Supremacy*, Alfred A. Knopf, New York, 1941.

Langeluttig, A., *The Department of Justice in the United States*, The Johns Hopkins Press, Baltimore, 1927.

Post, C. G., Jr., "The Supreme Court and Political Questions," *Johns Hopkins University Studies in History and Political Science*, Vol. LIV, No. 4, Baltimore, 1936.

Pound, Roscoe, *The Spirit of the Common Law*, Jones, Marshall & Company, Boston, 1921.

—, *Organization of Courts*, Little, Brown & Company, Boston, 1940.

Rose, J. C., *Jurisdiction and Practice of the Federal Courts*, rev. ed., Matthew Bender & Company, Albany, 1938.

Swisher, C. B., *Growth of Constitutional Power in the United States*, University of Chicago Press, Chicago, 1946.

Umbreit, K. B., *Our Eleven Chief Justices*, Harper & Brothers, New York, 1938.

Warren, Charles, *The Supreme Court in United States History*, 3 vols., Little, Brown & Company, 1922-1926.

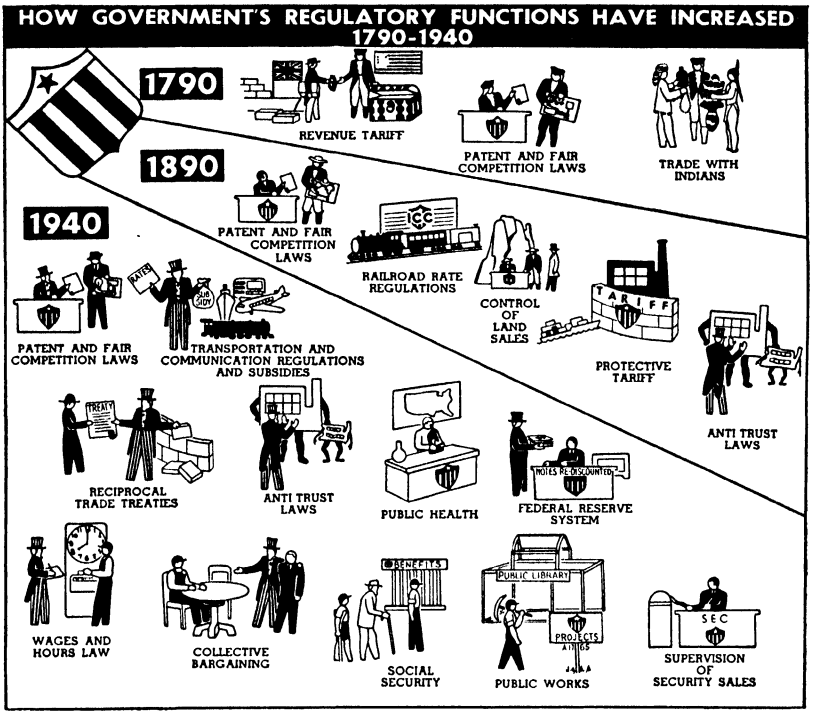
Willoughby, W. F., *Principles of Judicial Administration*, Brookings Institution, Washington, 1929.

21 · *The Problem of Administration*

The problem of administration is the most recent addition to the list of general governmental perplexities not only in the United States but in virtually every other country. Of course, it cannot be argued that the complicated administrative machinery, now so striking a characteristic of modern government, sprang up overnight. National defense, in so far as it belongs to the administrative field, antedates kings and parliaments. Irrespective of whether they be large or small, democratic or totalitarian, old or new, governments have never as yet discovered a means of getting along without money. Even the newer administrative agencies perform functions that were not entirely unknown in past centuries. But until comparatively recently governments gave only a modicum of attention to what is now included in administration. The collection of taxes was often "farmed" out to private individuals who paid the government a specified amount and then gouged as much more out of the people as the traffic would bear. In other words, while certain functions now associated with administration have long been performed, there was not the detailed consideration, the organized attention, the elaborately planned programs, and the high degree of professionalism which characterize them today.

Growth of Administration in the United States The government which was organized in 1789 started out with a President, Vice-President, and a full-fledged Congress and very shortly added a complete system of federal courts. In addition, there was a Secretary of State to assist the President in foreign relations, a Secretary of the Treasury to supervise the collection and paying out of tax money, and a Secretary of War to do what he could with the tiny army which the young republic boasted. An Attorney General was provided to furnish legal advice to the President, and a Postmaster General was placed in charge of the mails. These five officials together with scarcely more than a handful of helpers constituted the

administrative service of the United States. Within a few years it was held desirable to add a Navy Department to the little group already struggling to meet the problems confronting the country. It was not until sixty years after the founding of the United States that the Interior Department was established. Then there was a



Graphics Institute for Sloan Foundation.

long pause which brought civil war and reconstruction but comparatively little drastic change in the administrative setup. The Department of Agriculture was not created until the centennial year, although a modest beginning had been made in starting independent establishments by the congressional authorization of the Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887.

Recent Expansion In 1889, after the government had been in operation for a century, the United States had eight departments

and two commissions. The succeeding half a century has added two major departments, three agencies that can only with difficulty be distinguished from departments, and over fifty independent establishments. But this does not begin to tell the story, for the departments already in existence expanded their programs and added thousands of new employees.

Popular Misconceptions There is a good deal of loose talk about the reasons for the expansion of the administrative side of government in the United States. Hearing some people rave, one might imagine the entire administrative system to be a giant bloodsucker attached to the body politic which cannot be removed because it has grown stronger than government itself. It is popular among these people to refer to the "good old days" when the people were not pestered by a multitude of regulations and an army of functionaries. By and large these people regard administration as an unnatural perversion which threatens not only individual freedom but the very existence of the country. This point of view seems so absurd that many informed persons refuse to give it even momentary attention. On the other hand, the very fact that it is held by so many people indicates an alarming misunderstanding. No one can justify all of the practices of administrative agencies in the United States—there has been great waste of public funds at times, terrible blundering, and inexcusable working at cross-purposes. But one cannot judge an entire system by isolated examples, any more than one can condemn all business because of some cases of dishonesty, unreasonably high profits, and striking inefficiency, or the church because of venal clergy, or the home because of irresponsible parents.

Growth Caused by Changing Conditions An examination of the administrative services will indeed reveal many imperfections that should receive careful attention from both government and citizens, but it will also show large numbers of hard-working people, numerous valuable services and a considerable degree of efficiency. While there has been a certain amount of maneuvering on the part of administrative agencies to expand their staffs and their functions, it would be far from accurate to say that this explains in any large measure their present status. The administrative side of government develops as the population becomes congested and as social and economic problems multiply and increase in complexity. When a

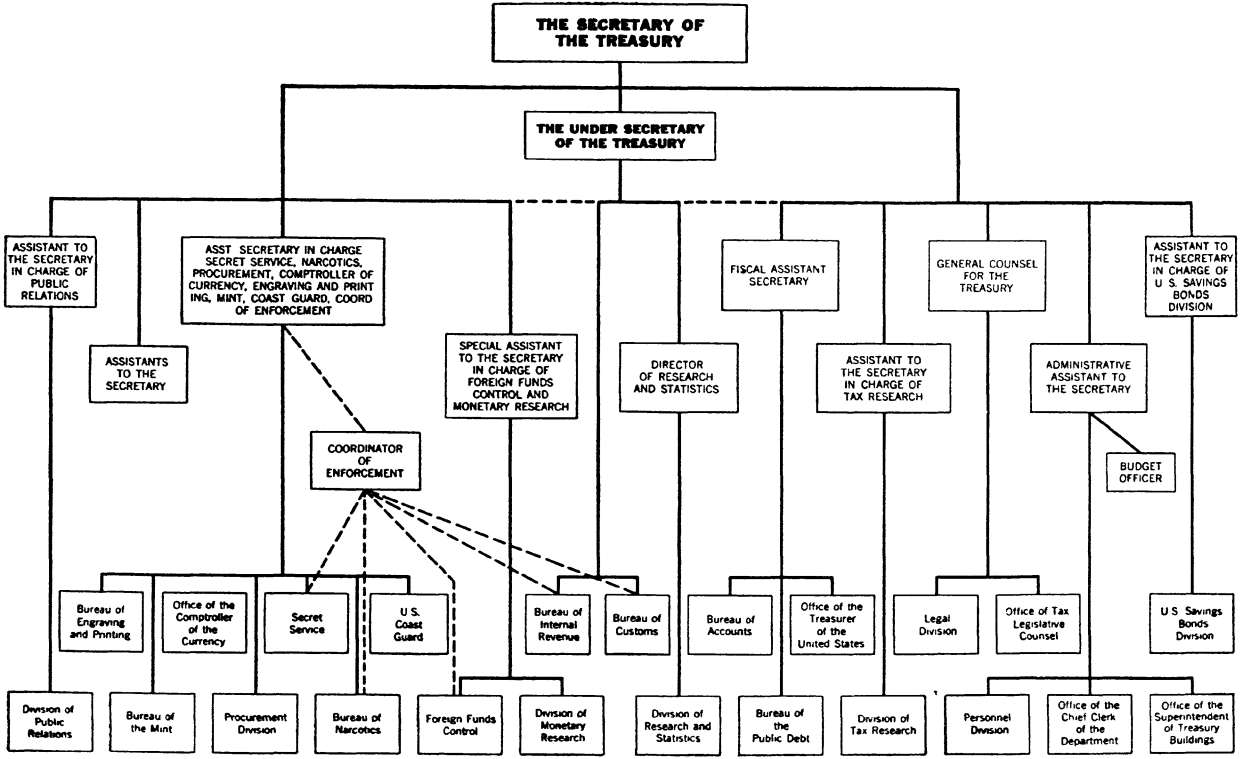
country has a small population scattered over a large territory, its economy is not likely to be highly industrialized nor are its social problems apt to be acutely complicated. Beyond furnishing protection against external enemies, maintaining a reasonable amount of law and order, providing public schools, and constructing a few roads and canals, it is scarcely necessary for the government to exert itself. High finance does not flourish and hence does not need regulation; relations between labor and capital are personal and simple enough to be handled individually: unemployment is uncommon and large-scale relief unnecessary; business is not monopolistic and constitutes no threat to the public interest. Of course, administrative activities are few in number and simple in character under these circumstances, for private initiative can take care of problems in a reasonably satisfactory manner.

Recency of Federal Expansion The national government has been affected by these developments somewhat more recently than the state and local governments. As long as problems were relatively simple, they were, under our federal system, largely handled by the states and their local subdivisions. Thus for decades we have had poor relief administered by counties and cities. When, however, the demands become so great that they exceed the resources of the local governments or when the situation develops such complications that even state programs prove futile, then people turn to the national government.

ORGANIZATION OF THE NATIONAL ADMINISTRATIVE SYSTEM

Legal Basis The elaborate administrative system of the national government is very largely based on laws passed by Congress. The Constitution makes no provision for administrative organization beyond implying that the President shall have general oversight. Acting under its enumerated powers or on authority implied therefrom, Congress has passed a large number of acts which provide for the creation and general organization of administrative agencies. The President, both under his constitutional authority and under powers conferred on him by Congress, has issued executive orders which set up emergency agencies of a temporary character and which furnish the details relating to the organization of more permanent departments.

Lack of Uniformity The very fact that the administrative



U.S. Government Manual.

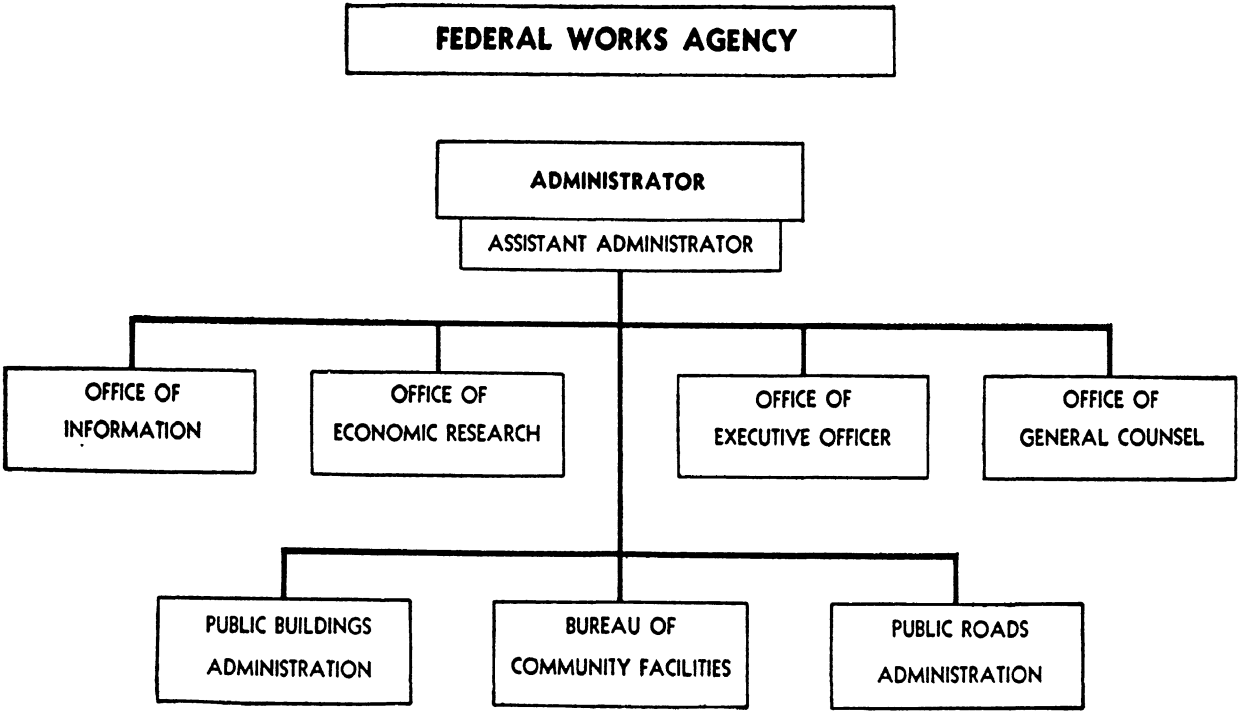
THE TREASURY DEPARTMENT

departments are for the most part the creations of Congress makes for a lack of uniformity which immediately strikes even a casual observer. Congress, encumbered with many cares, does in general only what is immediately necessary. Therefore, it has set up the administrative system piecemeal rather than as an integrated whole. Many of the new agencies might be tacked onto already existing departments, but Congress is usually reluctant to do that for several reasons. In the first place, there has long been a good deal of suspicion of the administrative departments on the part of the members of Congress. Both Congress and the administrators have been head over heels in politics, but the politics have not been of the same variety. Congressmen are immersed in party politics which the administrative people often refer to in slighting terms. Yet after condemning Congress for playing politics, especially for displaying a fondness for the spoils system, the administrators proceed to demonstrate what heights (or depths) can be reached by departmental, interdepartment, and personal politics. Adding more functions to existing agencies would merely serve to increase an importance which seems already too overweening to many congressmen. Finally, there is always the specious argument that a new agency may be temporary in character and hence should be constructed in such a fashion that it can be pulled down when the occasion is ripe.

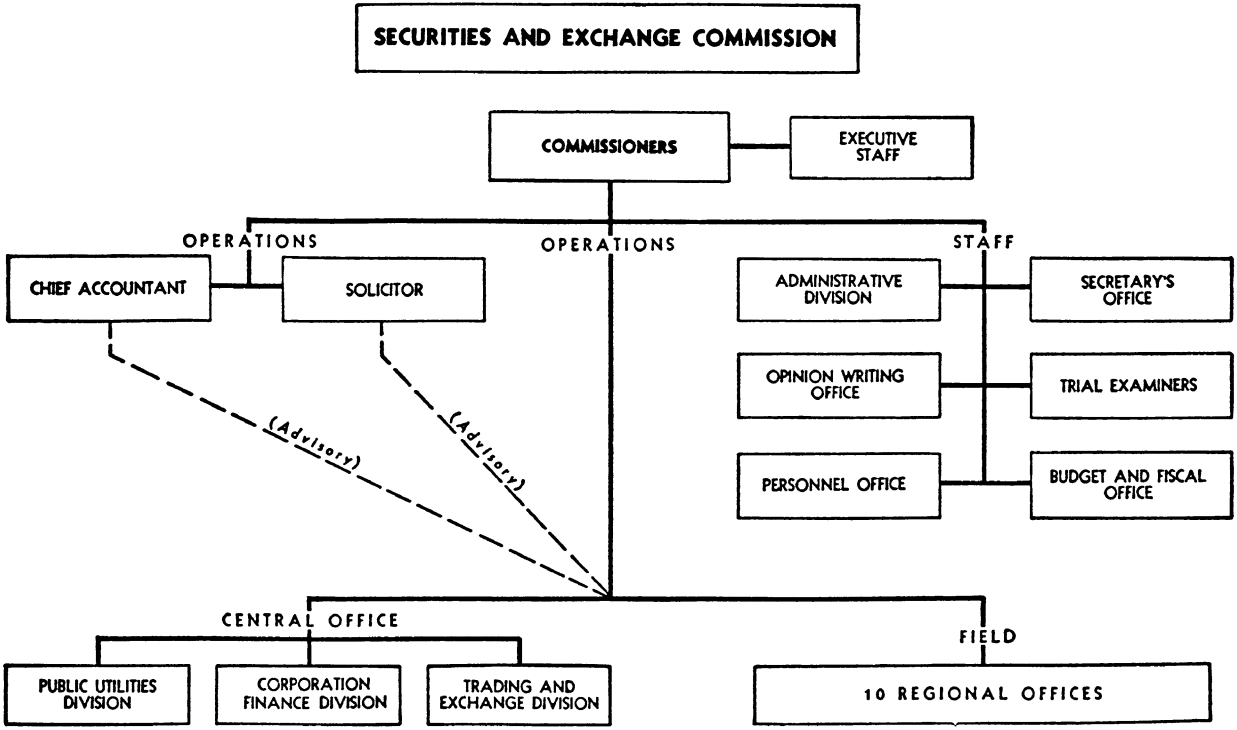
Varieties of General Form At the center of national administration, Congress has placed the nine great departments which in certain instances are almost as old as the republic itself.[1] Even these are not particularly uniform in character, for some of them employ ten times as many workers, expend several times as much money, and are charged with much heavier responsibilities than others.[2] Almost on a par with these nine departments there are three new "agencies" which can only with difficulty be differentiated from the former. The Federal Security Agency, Federal Works Agency, and National Housing and Home Finance Agency employ numerous persons, spend enormous sums of money, and wield im-

[1] Three departments, State, Military, and Treasury, claim to be older than the government in which they are now organized. They base their argument on an allegation of descent from agencies of a similar function under the Continental Congress and the Articles of Confederation.

[2] The Treasury Department, for example, overshadows the Labor Department on virtually every count.



U S Government Manual,



U.S. Government Manual.

pressive authority—indeed they sometimes seem to eclipse the less important departments. Then there are numerous so-called "independent establishments," some of which are half a century old and others only a few months advanced from infancy. The favorite label attached to these independent establishments is "commission," but there are also "offices," "bureaus," "boards," "councils," "authorities," and "administrations."

Board versus the Single-head Type The nine departments and the three agencies have single executives at their head, although they may have boards to assist in certain aspects of their work—the Housing Agency, for example, includes the Home Loan Bank Board. Some of the independent establishments also have single heads, but the more common picture is the board, which ordinarily runs anywhere from three to eleven in size. It might be supposed that the departments and the agencies would administer work which calls for prompt decision and clearcut responsibility, whereas the independent establishments would be quasi-judicial or quasi-legislative in character. But this is not necessarily the case, for the work of an independent establishment headed by a board is sometimes scarcely distinguishable in general character from that of a department.

Internal Organization Though there is some divergence among the administrative establishments in internal organization, the uniformity seems to be greater than in the broad outline of structure. There are subdivisions which are designated "bureaus," "services," "offices," and "divisions," headed by chiefs, commissioners, directors, comptrollers, and so forth, but there is actually often less difference among them than the titles would imply. In other words, a "bureau" in one department may be very similar in form and functions to a "division" in another department; an "office" may differ only in minor details from a "service." All of the departments and establishments of any consequence are subdivided into sections which carry on the duties entrusted to them. These are headed by single officers who, though sometimes appointed on a political basis, tend to be professional in background and on a more or less permanent tenure. The secretaries, undersecretaries, assistant secretaries, administrators, directors, and commissioners who are in general charge of the administrative agencies are almost invariably political appointees who go out of office when a new President is

inducted or at least as soon as their terms, as prescribed by law, have expired.[3]

AUTHORITY OF THE ADMINISTRATIVE AGENCIES

Legal Basis As we have noticed in the organization of the administrative departments, Congress is the chief source of the authority exercised. The Constitution confers powers on Congress which by their very nature cannot be directly carried out. When the necessity of using these powers has appeared, Congress has enacted general laws which instruct administrative departments what their responsibilities are in such a connection. The latter, then, as agents of the legislative branch, proceed to perform the duties which have been placed upon them. In addition, it is possible for the President to ask the administrative agencies to assist him in the conduct of his constitutional duties. It should be remembered at this point, however, that neither the Congress nor the President can delegate their authority completely to an administrative agency,[4] though there has been a distinct trend toward granting extensive political discretion to administrators. Congress or the President must give general instructions about what is to be done, either by laws or executive orders, leaving the actual routine as well as the determination of detailed policies to the administrative agencies.

Governmental Functions The older administrative departments are entrusted with many powers pertaining to the general operation of government. In other words, in carrying out the powers expressly granted by the Constitution Congress uses the administrative departments as agents for regulating interstate commerce, supervising naturalization, and preparing for national defense. However, Congress, pointing out the popular demand for federal activity in social security, public health, education, and road building, has not been satisfied with its enumerated powers. But not always having the power to enter these fields directly, Congress has

[3] Heads of commissions often are appointed for four- or six-year terms and usually hold office until their terms expire.

[4] See *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495 (1935). In 1941, however, in *Opp Cotton Mills* v. *Administrator of Wages and Hours*, 85 L. Ed. 407 (1941), the Supreme Court sanctioned a considerably greater degree of delegation than it had previously, when it held constitutional the provision enabling the Wages and Hours Administrator to determine the wage standards necessary to permit a product to be sold in interstate commerce.

appropriated large sums of money to be used in assisting those states which will meet the standards which it sets up. The Federal Security Agency is perhaps the best example of an administrative establishment which has little absolute power,[5] yet exerts very great influence through the disbursement of grants-in-aid to states which co-operate with it.

Advisory Functions Another type of authority is purely advisory in character. For example, Congress appropriates money to enable the Office of Education to carry on research in the field of public education and to publish the results of its investigations. This office cannot compel school authorities to pay any attention to what it regards as desirable—it can only hope that its conclusions will be sufficiently impressive to lead to some action.

Managerial Functions Still another type of power may be designated "managerial." Increasingly during recent years Congress has set up government corporations[6] which may be expected to deal with agricultural surpluses, credit, or insurance very much as a private business would. The Commodity Credit Corporation purchases various agricultural products for specified purposes; the Reconstruction Finance Corporation loans money to local governments, foreign governments, and private corporations; the Federal Deposit Insurance Corporation insures the deposits of all national banks and many state banks which wish to avail themselves of its services. The Tennessee Valley Authority and the Panama Canal manage great public works which are not unlike private enterprises.

Quasi-judicial and Quasi-legislative Power Finally, there are a number of administrative agencies which perform duties which are semi-judicial and semi-legislative in character. The Federal Communications Commission and the Interstate Commerce Commission both sit in a quasi-judicial capacity in connection with radio broadcasting, interstate telephone and telegraph lines, and interstate railroads and buses. After listening to evidence presented to them, they make decisions which in certain matters have approximately the same force as those made by federal district courts. A number of administrative agencies exercise quasi-legislative authority as a result of congressional action. Congress cannot at present hope

[5] This agency does have extensive authority over the old-age insurance program which is not based on the states.

[6] See Chap. 24 for additional discussion of government-owned corporations.

to prepare detailed legislation covering all the complexities of American life. Hence in certain instances it lays down general principles and directs administrative agencies to issue detailed regulations within this general framework, and these regulations have the force of law.

ADMINISTRATIVE REORGANIZATION

The administrative system of the federal government had become so top-heavy by 1930 that widespread alarm was expressed by thoughtful citizens. Congress had added a bit here and a bit there, never bothering to overhaul thoroughly and to integrate, until a truly fantastic structure had been erected. About this time a member of Congress, and a man who spoke with authority as a lawyer, took some time from his busy life to write a book which he called *Our Wonderland of Bureaucracy*.[7] He asserted that our very political foundations were in danger of being swept away by the irresponsible and capricious quasi-legislative and quasi-judicial rulings of the most powerful commissions, even going so far as to foresee the withering away of the legislative branch to be supplanted by complete and tyrannical administrative domination. The elaborate program of the New Deal not only did not help to bring order out of what some considered as chaos, but it added numerous other agencies to what some people regarded as an already tottering edifice.

Criticisms of the Administrative System In addition to the general criticisms which have been noted before, several specific charges were leveled at the national administrative system as it existed prior to World War II. Perhaps the most telling of these was the one which pointed out how utterly impossible it was for any President to keep his eye on so variegated and unintegrated a setup. Under the Constitution the chief executive is charged with responsibility for supervising the executive and administrative departments; certainly it is exceedingly desirable to have some one ultimately responsible for what the departments do. Yet although the President was nominally at the head of the system, it was humanly impossible for him to do more than keep a weather eye out for abuses. In the second place, such a top-heavy structure was more

[7] This was published in 1932 and had a wide circulation. The author was James M. Beck.

or less inefficient. Half a dozen agencies might be working on different phases of the same problem and no one of them desired to assume or was assigned final responsibility. One agency repeated what had already been done by another; another attempted to bring about the very opposite end being sought by a fourth. As Secretary of Commerce Mr. Hoover discovered that forty different agencies in Washington and thirty-four in the field purchased supplies for the federal government; that fourteen different divisions of six departments interested themselves in the merchant marine; that eight agencies in five departments sought to further conservation of resources; and that fourteen sections of nine different departments undertook the construction of public works.[8] Moreover, boards were charged with handling duties that virtually all experts in public administration agree should be placed under a single head if prompt and decisive action is to be expected. Finally, large numbers of critics waxed eloquent about the economic wastefulness of a system that would permit duplication, red tape, working at cross-purposes, and long delay. Extreme enthusiasts believed that a large part of the cost of the government could be saved without decreasing the efficiency of the services rendered if the system were more adequately organized. And even more cautious persons agreed that substantial savings could be effected.

Early Efforts Unsuccessful As far back as the first decade of the century President Taft appointed a commission to investigate the problem of governmental efficiency. This commission took its task seriously and made a report which might well have received serious attention. Woodrow Wilson was too burdened with war problems to give much time to reorganization, but he did exhibit interest in the problem. Herbert Hoover after making a survey of the extent of duplication persuaded Congress to grant him authority to reconstruct the system subject to congressional approval. Acting under this permission he undertook an extensive rearrangement and consolidation of administrative agencies, but a Democratic Congress refused to approve of any of the changes which he had worked out. Hence, despite all of the interest on the part of Presidents, the criticism of thousands of citizens, and the proposals looking toward improvement, very little was accomplished

[8] Quoted from F. A. Ogg and P. O. Ray, *Introduction to American Government*, rev. ed., D. Appleton-Century Company, New York, 1938, p. 282.

prior to 1933. The agencies themselves were not anxious to be regimented; public employees feared that their jobs might be swept away by a reorganization; politicians wanted nothing that would make it more difficult to use the government for their own interests; the states foresaw an expansion of federal power; and Congress was unable to agree as to what steps would prove advantageous.

The First Roosevelt Reorganization One of the last pieces of legislation signed by President Hoover was a bill which gave Franklin D. Roosevelt power to do what no predecessor had been able to do. For two years the chief executive was to have an almost free hand in remodeling the administrative setup, with the provisos that the ten major departments must be retained and that orders carrying out changes should not go into effect until they had rested before Congress for sixty days. Though occupied with the problems presented by the worst depression in American history during the two-year period allowed for this reconstruction, the President found some time to give to reorganization and issued numerous orders which Congress accepted. But while he was with one hand consolidating and integrating, with the other he was adding more rapidly new agencies which could not be fitted into any orderly system. Some important changes were made, but they were not far reaching enough in character to effect any general reorganization.

Committee on Administrative Management The addition of the New Deal alphabetical agencies to the administrative system brought the total number to approximately one hundred. These new agencies were neither placed under the merit system nor otherwise brought into well-defined relationship with the older departments. Mr. Roosevelt in 1936 appointed a President's Committee on Administrative Management to examine the problem and recommend what, if anything, should be done to deal with it. The committee proposed twelve major departments: nine of the existing ones, the Department of Interior to be renamed the "Department of Conservation," and two new departments to be known as "Social Welfare" and "Public Works." They urged that the independent establishments be consolidated with these departments or, in the case of quasi-judicial agencies, attached to them. And they suggested that the merit system of public employment be expanded to include all

non-policy-performing positions; that a permanent central planning agency be established in the office of the President; and that the matter of proper administrative organization be given regular rather than sporadic attention.[9] Had a bill embodying the recommendations of this committee been submitted to Congress promptly there is reason to believe that it would have been passed without substantial amendment. However, the President allowed the report to remain on his desk for several months and in the meantime he sent to the Congress his court reorganization bill which stirred up a tempest such as has rarely been observed in the Capitol. Having broken its fetters Congress was in a mood for additional rebellion and saw that opportunity in refusing to approve the administrative reorganization bill.

The Reorganization Bill of 1939 After refusing to accept the original reorganization bill, the Senate proceeded to have the Brookings Institution prepare a study on administrative reorganization.[10] This report agreed with some of the recommendations of the earlier committee, but it challenged some of the conclusions of the earlier report in regard to the Civil Service Commission and the quasi-judicial commissions. Finally, in 1939 a reorganization bill was passed which authorized the chief executive up to July 1, 1940, to "reduce, co-ordinate, consolidate, and reorganize" within defined limits, subject to the veto by a concurrent resolution of both houses. This bill did not authorize any increase in the number of major departments nor even a change in their names. It also placed fifteen of the independent establishments beyond the power of the President to touch.

The Five Reorganization Plans of 1939-1940 Acting under the authority conferred on him by the 1939 act, Franklin D. Roosevelt drafted five reorganization plans during 1939 and 1940 which were approved by Congress. Plans 1 and 2 which became effective on July 1, 1939, provided for the establishment of three agencies which in many respects rank with the ten major departments: the

[9] This report was published by the Government Printing Office in 1937 under the title *Administrative Management in the Government of the United States.* Supplementary studies were also published.

[10] Additional discussion of this report by the Brookings Institution is available in L. M. Short, "An Investigation of the Executive Agencies of the United States Government," *American Political Science Review,* Vol. XXXIII, pp. 60-66, February, 1939.

Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency.[11] Widely scattered divisions of the government were brought together into these three reasonably integrated major agencies. The Federal Security Agency, for example, drew the Office of Education from the Interior Department, the Public Health Service and the American Printing House for the Blind from the Treasury, the United States Film Service and Radio Division from the National Emergency Council, the United States Employment Service from the Labor Department, and the Social Security Board and the Civilian Conservation Corps from independent establishments. The changes in the ten departments were much less significant, though some nineteen agencies were transferred from independent status or moved from department to department. The Bureau of the Budget and the Central Statistical Board were placed in the executive office of the President. Plans 3, 4, and 5 brought about only minor changes.

The net result of the reorganization cannot be ignored, but nevertheless was less than had been hoped for. The establishment of the three great agencies dealing with federal security, public works, and federal loans was certainly of far-reaching importance, although it may be unfortunate that it was not possible to put them fully on a par with the ten major departments. The total number of administrative agencies was reduced considerably below the approximately one hundred reported by the Committee on Administrative Management, although it was still larger than many considered desirable. However, the inability of the President to touch the fifteen most powerful independent establishments prevented seemingly logical shifts and rearrangements. Hence reorganization remained on the list of the important problems of the national government.

Reorganization during World War II Shortly after the United States found herself at war with Japan, Germany, and Italy, Congress authorized the President to make such reorganization of the administrative structure as would contribute to national defense.[12] Almost at once President Roosevelt issued executive orders

[11] For plans 1 and 2, see *United States Statutes-at-Large*, Seventy-sixth Congress, first session, Vol. LIII, part 2.

[12] This authority was granted during the period of the war and for six months thereafter.

which were aimed at important changes. To begin with, the Federal Loan Agency was abolished, many of its parts, including the Reconstruction Finance Corporation, being transferred to the Department of Commerce. Then a new National Housing Agency was created to assume responsibility for the work of some sixteen bureaus of the federal government which had been attempting to deal with various aspects of housing.[13] At about the same time the chief executive grouped seventeen bureaus and administrations of the Department of Agriculture into four large divisions.[14] Most important of all, the White House announced in February, 1942, a sweeping reorganization of the War Department which brought the many subdivisions of that agency under three great services that would handle ground operations, air warfare, and supplies.[15] Nevertheless, the reorganization did not begin to keep pace with the pressure which the national defense program developed toward the setting up of additional agencies. By 1945 the situation had again become so involved that President Truman sent a special message to Congress asking for authority, similar to that given his predecessor in 1939, to abolish, consolidate, and reorganize the federal administrative system. In this connection he pointed out that in 1945 there were 1,141 principal component parts of the executive branch of the government as follows: 13 in the executive office of the President, 499 in the ten departments, 364 in the twenty-three emergency boards, and 265 in twenty-six independent establishments, boards, commissions, and corporations.[16]

The Reorganization Act of 1945 Shortly before recessing for Christmas in 1945 Congress passed an act which authorized the

[13] The National Housing Administration was assigned housing functions that had previously been handled by the following: United States Housing Authority, Federal Housing Administration, Federal Home Loan Board, Federal Home Loan Bank System, Federal Savings and Loan Association, Home Owners' Loan Corporation, Defense Homes Corporation, Farm Security Administration, Public Buildings Administration, Division of Defense Housing and Mutual Ownership Defense Housing Division of the Federal Works Agency, the Division of Defense Co-ordination, and the Army and the Navy except for building on military reservations.

[14] These divisions were as follows: Agricultural Marketing Administration, Bureau of Agricultural Economics, Agricultural Conservation and Adjustment Administration, and Agricultural Research Administration.

[15] For additional discussion of this reorganization, see Chap. 28.

[16] For the text of the President's message to Congress, see the *New York Times,* May 25, 1945.

President to make far-reaching changes in the federal administrative structure during the years 1946 and 1947. Provision was made that the ten major departments should be retained and that five independent agencies could not be abolished. Especially important was the section which made it possible that changes proposed by the President would become effective unless vetoed by a majority vote of both houses of Congress. Despite the limitations imposed by the act, it conferred more sweeping authority on the President to reorganize than had even been granted previously. But the actual accomplishments under the act were disappointing to many. The Federal Security Agency came in for a certain amount of reorganization, receiving the Children's Bureau from the Department of Labor. After one attempt had been vetoed by Congress, the various housing agencies of the government were brought together permanently [17] under a single organization. However, most of the changes were of minor significance and left the vast federal administrative structure far from coordinated.

Recent Congressional Activity The most significant advance in administrative reorganization in recent years has resulted from the decision by Congress to unify the armed services. Following a recommendation by the President, Congress in 1947 authorized the setting up of a National Military Establishment as one of the nine major departments with cabinet status. Three departments of the Army, Air Force, and Navy were also provided as constituent parts of the National Military Establishment. Another step promising possible results of far-reaching importance was also taken by Congress in 1947 when a twelve-member commission was created to investigate the simplification of the national administrative structure. With one third of the members chosen by the Speaker of the House, the president *pro tempore* of the Senate, and the President respectively, this commission not only received a free hand in considering possible changes but also, unlike some of the earlier bodies, adequate funds to defray expenses.

[17] They had been brought together temporarily as a war measure by executive order, but this arrangement was due to revert after World War II was declared at an end.

Selected Bibliography

Appleby, P. H., *Big Democracy*, Alfred A. Knopf, New York, 1945.

Comer, J. P., *Legislative Functions of National Administrative Authorities*, Columbia University Press, New York, 1927.

Cushman, R. E., *The Problem of Independent Regulatory Commissions*, Brookings Institution, Washington, 1937.

Doyle, W. K., *Independent Commissions in the Federal Government*, University of North Carolina Press, Chapel Hill, 1939.

Gaus, John M., *Reflections on Public Administration*, University of Alabama Press, University, 1947.

—, L. D. White, and M. E. Dimock, *Frontiers of Public Administration*, University of Chicago Press, Chicago, 1936.

Graham, G. A., and Henry Reining, Jr., eds., *Regulatory Administration*, John Wiley & Sons, New York, 1943.

Gulick, Luther, and L. Urwick, *Papers on the Science of Administration*, Institute of Public Administration, New York, 1937.

Haines, C. G., and others, *Essays on the Law and Practices of Governmental Administration*, The Johns Hopkins Press, Baltimore, 1935.

Herring, E. P., *Federal Commissioners*, Harvard University Press, Cambridge, 1936.

—, *Public Administration and the Public Interest*, Whittlesey House (McGraw-Hill Book Company), New York, 1936.

Landis, J. M., *The Administrative Process*, Yale University Press, New Haven, 1938.

Macmahon, Arthur W., and John D. Millett, *Federal Administrators*, Columbia University Press, New York, 1939.

McDiarmid, John, *Government Corporations and Federal Funds*, University of Chicago Press, Chicago, 1938.

Marx, Fritz Morstein, and others, *Public Management in the New Democracy*, Harper & Brothers, New York, 1940.

—, and others, *Elements of Public Administration*, Prentice-Hall, Inc., New York, 1947.

Meriam, Lewis, and L. F. Schmeckebier, *Reorganization of the National Government*, Brookings Institution, Washington, 1939.

Pennock, J. R., *Administration and the Rule of Law*, Farrar & Rinehart, New York, 1941.

Simon, Herbert A., *Administrative Behavior*, The Macmillan Company, New York, 1947.

Thurston, J. H., *Government Proprietary Corporations in the English-Speaking Countries,* Harvard University Press, Cambridge, 1937.

Urwick, Lyndall, *The Elements of Administration,* Harper & Brothers, New York, 1944.

Waldo, Dwight, *The Administrative State,* The Ronald Press, New York, 1948.

Wallace, S. C., *Federal Departmentalization,* Columbia University Press, New York, 1941.

White, L. D., *Introduction to the Study of Public Administration,* rev. ed., The Macmillan Company, New York, 1939.

——, and others, *Making Our Government Efficient; Public Administration in the United States,* National Council for Social Studies, Washington, 1943.

22 · *Public Personnel Administration*

The striking expansion of the administrative side of government has had many effects, not the least of which is the accentuation of the problem of adequate public personnel. Under the type of government which characterized the United States during its first century, the need for large numbers of public employees was not entirely lacking, but it was certainly far less apparent than has been the case recently. The national government started out in 1789 with approximately three hundred civil servants.[1] In the centennial year it gave civil employment to slightly more than 150,000 persons,[2] while by the year 1939 the number approximated one million [3]—the war sent it soaring above the three-million mark. As a postwar figure the President set a total of 1,600,000, but on the date set for reaching this level, July 1, 1947, the number still exceeded two million. But spectacular as the increase in numbers has been, figures do not begin to tell the whole story, for the new emphasis upon administration has required far more specialized training and expertness from civil servants as well as greater numbers of them.

The Spoils System The beginning years of the new government saw a remarkable succession of able Presidents. It would not be accurate to say that there was no disposition to make appointments to federal positions on other than a merit basis, but even so the general record was high.[4] If the earlier period can be regarded as reasonably free from vicious political influences, that can scarcely

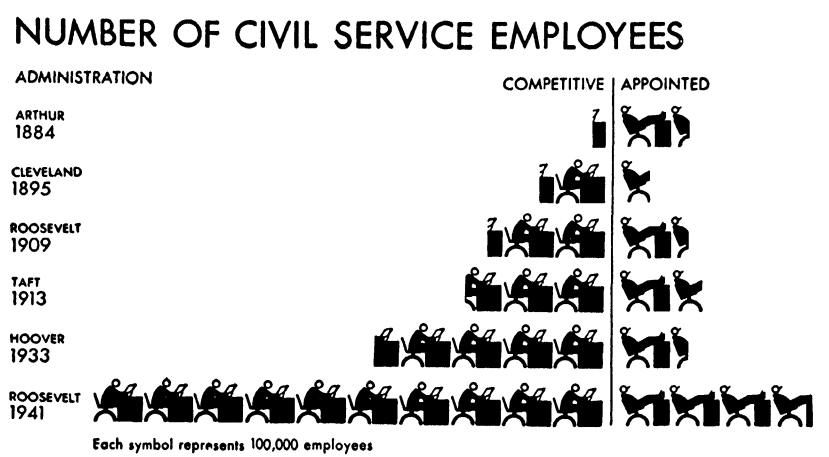
[1] When the government moved to Washington from Philadelphia in 1800, only fifty-four clerks had to be moved.

[2] The exact number was 159,356.

[3] In 1939 the exact number was 925,982.

[4] For a good discussion of the place of spoils in American history, see C. J. Friedrich, "The Rise and Decline of the Spoils Tradition," *Annals of American Academy of Political and Social Science,* Vol. CLXXXIX, pp. 10-17, January, 1937.

be said of the years 1829 to 1865. Perhaps too much onus has been placed upon the shoulders of Andrew Jackson and his immediate successors in the presidency, but it cannot be disputed that they fell far below Washington in their insistence upon qualified public servants. Jackson is identified in the minds of many people with that famous epigram: "To the victor belong the spoils." [5] Following the Civil War public opinion began to question some of the extreme practices associated with the spoils system. Examinations



Pictograph Corporation for Harper & Brothers.

were used by some of the more progressive departments for the selection of employees: restrictions were placed upon assessment of federal employees for political party campaign funds; and there was a beginning made in regulating the partisan activity of government servants. The assassination of President Garfield by a disappointed office seeker served to arouse public opinion from its lethargy and focused it, as perhaps never before, on the evils inherent in the spoils system.

Current Status of Spoils in Public Employment The exact status of the spoils system at present is difficult to ascertain. Some positions are theoretically under a merit plan, but still they do not

[5] Actually this statement was made by Senator William L. Marcy of New York, but it has been popularly attributed to Jackson himself because it is such a succinct statement of his point of view.

seem to receive adequately qualified incumbents. Others are exempted by law from the general competitive system, but in reality many good appointments are made. Politicians allege that the bureaucrats have been so clever in manipulating the civil service machinery that there has arisen a new and more vicious spoils system, based on personal rather than party politics. The picture is, of course, exceedingly complicated; however, in general, there is a feeling among competent observers that public personnel administration is now distinctly superior in standards to the level of the nineteenth century.

Rise of the Merit System Foreign students are frequently amazed by the leisurely growth of the merit system in the United States. The Pendleton Act of 1883, despite publicity as a drastic reform, covered only 13,780 positions, or just 10 per cent of the total field. The Civil Service Commission, for which it provided, received the most niggardly appropriations and was regarded with extreme suspicion by members of Congress, heads of departments, and the political fraternity in general. Ten years after the new system went into effect just over one fourth of the federal positions were subject to it; twenty years saw 51.19 per cent placed under its jurisdiction. By 1914 the proportion had passed the two-thirds mark,[6] and in 1924 it almost reached the three-fourths level.[7] In 1932 an alltime high of 81.82 per cent was achieved, but this slipped back rapidly until in 1937 just over 60 per cent of the civil positions were subject to the Civil Service Commission.[8] The Ramspeck Act of 1940 brought the figure back to approximately 80 per cent.

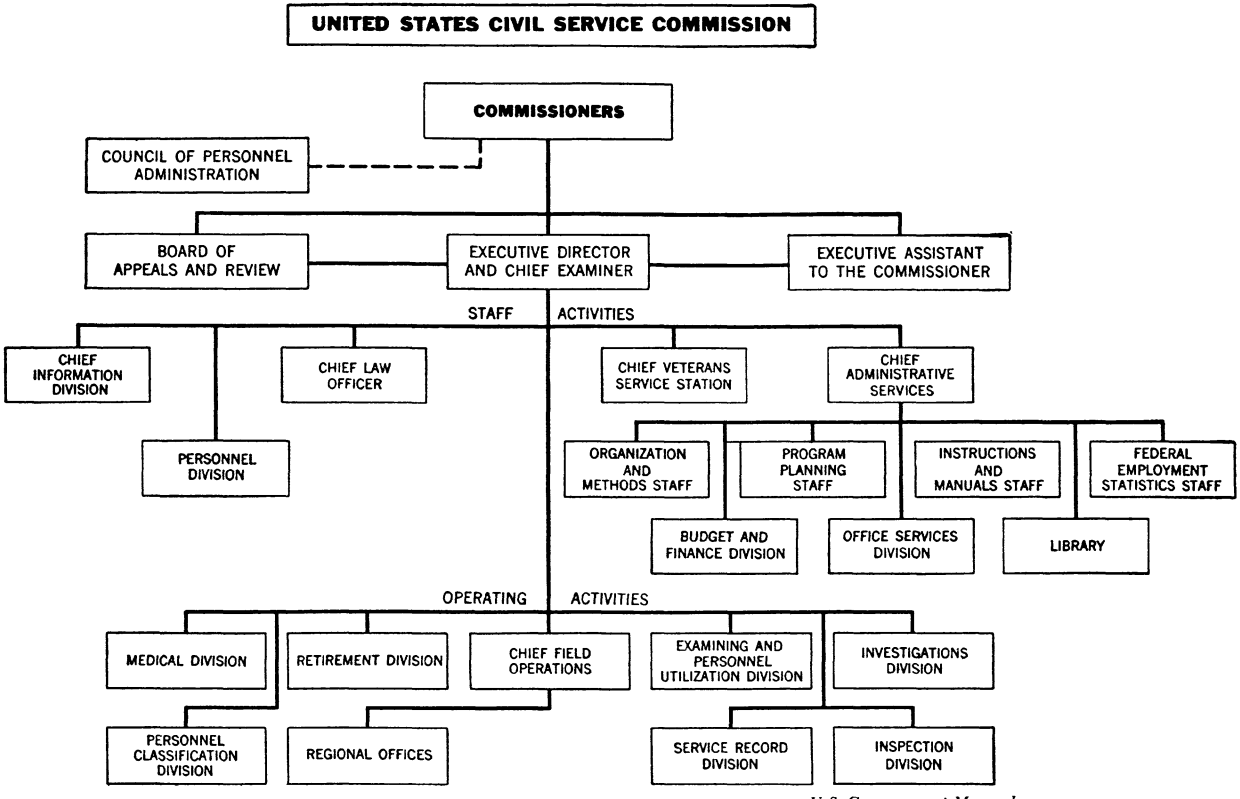
The Civil Service Commission Few government agencies are as diversely viewed by the rank and file of the people as the Civil Service Commission. Some enthusiasts regard it as the very palladium of the federal government structure, while carping critics charge it with the most monstrous practices. From its inception more than half a century ago[9] the Civil Service Commission has consisted of three members, not more than two of whom may be members of a single political party. They are appointed to their positions

[6] A total of 292,460 out of 435,000 positions, or 67.23 per cent, were subject to examination in that year.

[7] To be exact, 74.80 per cent of the positions were under the merit system.

[8] In 1937 about 64 per cent of the federal positions were under the Civil Service Commission.

[9] It was created in 1883 by the Pendleton Act.



U.S. Government Manual.

by the President with the consent of the Senate and are considered full-time employees of the government at salaries of $10,000 each per year.

Organization of the Commission Examination of the Civil Service Commission over its more than half-century of existence makes the conclusion difficult to escape that it has suffered from chronic malnutrition. In comparison with other less important agencies of the federal government it has had to get along on niggardly appropriations and operate with a pathetically small staff. It is not necessary to deal in detail with the subdivisions of the commission beyond saying that there is a breakdown along functional lines. In Washington there are the following important divisions and boards: Personnel Division, Examining and Personnel Division which includes sections on applications and certification, Investigations Division, Information Division, Service Record Division, Retirement Division, Medical Division, Inspection Division, Personnel Classification Division, and Board of Appeals and Review. In the field there are thirteen district offices which have jurisdiction over some 4,200 local boards of examiners attached to first- and second-class postoffices and more than 140 rating boards which are connected with national parks, reclamation projects, arsenals, and other federal establishments.[10]

General Functions of the Commission Contrary to the popular notion, the Civil Service Commission is not charged with making appointments to federal positions. It publicizes opportunities, gives examinations, prepares lists of those eligible for appointment, and certifies the names of those who possess the proper qualifications to the officials and agencies that do make the appointments, but it cannot itself bestow positions, except on its own staff. In addition to performing these functions, it has important duties in connection with classifying federal positions so that people who do the same type of work will possess substantially the same qualifications, hold similar rank, and receive equal pay. Moreover, it has general oversight in the case of service ratings and promotional examinations which determine increases in salary and elevations in rank. Employment records upon which retirement is based are kept either

[10] For additional discussion, see W. E. Mosher and J. Donald Kingsley, *Public Personnel Administration,* rev. ed., Harper & Brothers, New York, 1941, Chap. 5.

directly by the Civil Service Commission or under its supervision by the personnel agencies of the departments. Transfers of employees from one department to another must be approved by the commission.

Departmental Personnel Agencies In order to facilitate the work of the Civil Service Commission, divisions of personnel supervision and management have been set up in all the important departments and independent establishments during the years since 1938.[11] These are headed by personnel experts who have been drawn from private business, state and local government, and research agencies. They not only handle the relations between their agency and the Civil Service Commission but perform personnel functions for their departments. In order to bring these departmental personnel administrators into some sort of organization for clearing problems and ideas, there has been set up an interdepartment personnel committee known as the Council of Personnel Administration, on which the agencies, the Bureau of the Budget, and the Civil Service Commission have representation. These departmental personnel agencies were given added importance by an executive order issued by the President in 1946. Under this order considerable emphasis on decentralization is provided and agencies will give their own examinations to fill positions which are unique to a single department. The Civil Service Commission of course supervises the decentralized program.

Recruiting No aspect of public personnel administration is more important than recruiting, for unless the basic material is reasonably good no amount of in-service training, supervision, service rating, classification, or research will be able to provide an adequate staff of public employees. The Civil Service Commission has given some attention to this problem for many years, but it is only recently that recruiting has received anything like proper consideration. Underlying the entire recruiting problem is the prestige generally attached to public employment. If citizens generally believe that public employment offers satisfactory opportunities and is worthy of the services of the most capable men and women, recruiting is likely to be comparatively simple.[12] On the other hand,

[11] This was done by executive order of June 24, 1938.

[12] Professor L. D. White has published some illuminating monographs on this subject. See his *Prestige Value of Public Employment*, University of Chi-

if popular prejudice holds that the rewards of public employment are inadequate and that only the below-average can find scope for their talents in that capacity, the greatest effort will be necessary to attract good material. The United States has not been particularly fortunate in the prestige value of public employment, at least until quite recently. Prior to 1933 very few university-trained people seriously thought of public service as a career. That is not to say, of course, that there were no able public employees, for despite the general psychology a reasonable number of capable people did somehow or other get into the service.

The English Attitude It is instructive to compare the American attitude toward public employment with that which has characterized Britain. For a long period of time the most talented young men in England planned a career in the government service and immediately upon graduation from Oxford or Cambridge took the examinations for admission to the foreign service, the Indian Civil Service, and other branches of government employment. While, of course, the professions also attracted able young men, private business was frequently considered unworthy of the attention of those who combined ability and social position. No one can doubt that this tradition contributed very materially to the general excellence of the standards in British public employment.

Current Interest in the United States The depression following 1929 did much to open the eyes of Americans to the promise of public employment. For the first time in many years the vaunted security of business life proved vastly overrated and large numbers of able workers found themselves out of a job. With professional opportunities limited and private businesses firing rather than hiring, numerous young men and women reappraised public employment as a career. It did not require long for the word to spread among university students that public employment was far more promising than it had long seemed. The result has been gratifying to those who believe that one of the first, if not the first essential to improved government standards is competent and able public servants. It is not difficult to see the evidence of this radical change in attitude. Single examinations announced by the Civil Service Commission for college graduates attract as many as fifteen or twenty

cago Press, Chicago, 1929, and *Further Contributions to the Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1932.

thousand applicants. The National Institute of Public Affairs was founded to select the most promising university seniors for internship training following graduation.[13]

Announcement of Examinations An immediate device for recruiting persons for the federal service is the announcement of an examination. The Civil Service Commission prints folders, usually four pages in length, which carry at their top the title or titles of the position [14] to be filled. Until comparatively recently these announcements were not as informing as they might have been; nor were they as widely circulated as many considered desirable. At the present time, however, large numbers of announcements are printed and they are sent to selected lists of those who are in touch with qualified persons. University departments are kept informed of examinations that are open to their major students. State and local departments which employ people in a similar capacity are furnished these announcements for display on their bulletin boards.[15] How much these efforts for wider and more influential publicity have accounted for the notable increase in applications it is difficult to say, but there is reason to believe that some of the now apparent interest is traceable to the improved practice. Even if there are already large numbers of applicants, the spreading of announcements is worth while, for it is probable that a more capable group of applicants will file than under a more haphazard arrangement. And after all, it is not mere numbers but promising material that is required.

Examinations The giving of examinations probably deserves to be rated as the most important single step in the recruiting process.[16] Examinations cannot make up for lack of good material, but they should, if they are properly drawn, be able to separate the

[13] For an interesting article on the Institute's work, see O. T. Wingo, "Internship Training in the Public Service," *Annals of American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 154-159, January, 1937.

[14] Frequently several grades of a given position will be included in a single examination. In this case there may be titles as follows: junior statistician, assistant statistician, associate statistician, statistician, senior statistician, and principal statistician.

[15] Of course some of these local offices resent the announcements, feeling that they are an attempt to attract their employees. In these cases the announcement probably ends in a wastebasket.

[16] For additional discussion of this topic, see the United States Civil Service Commission, *Federal Employment Under the Merit System*, Government Printing Office, Washington, 1941, Chaps. 5 and 7.

good from the indifferent and bad. Moreover, the quality of the examinations bears some relationship to the attractiveness of the civil service. If examinations have a reputation as being meretricious, unfair, tricky, unrelated to the position being filled, then they discourage otherwise serious applicants.

Assembled Examinations The majority of applicants for federal civil service examinations are given assembled examinations. After their applications have been approved, they are notified to present themselves on a scheduled date at a specified examination place. A card bearing each one's name and the examination to which he has been admitted is furnished for identification. The commission has given due attention to the convenience of the applicants and consequently holds examinations at numerous centers in every state. The questions are uniform, however, for all of those throughout the country taking the same examination. A time limit is imposed so that stragglers will not take undue advantage.

Vocational Tests For a number of positions the primary requisite is actual skill in performance rather than a potential ability to acquire skill. Typists are judged very largely on the typing which they turn out; railway mail clerks are evaluated by their speed and accuracy in sorting mail under somewhat trying circumstances; machinists are rated on the skill with which they operate a given machine. Inasmuch as it is generally recognized that the best way to test these skills is a practical exercise based on them, the federal civil service now makes wide use of vocational tests.

Intelligence, Aptitude, Capacity, and Information Tests In examining candidates for positions that call for superior intelligence and broad background the Civil Service Commission is making use of tests which are supposed to determine such qualifications. University graduates are frequently given this type of examination either exclusively or in combination with a second test which reveals their grasp of the subject matter in a given field. Against these tests are leveled the same criticisms and objections as against short-answer questions, but they have the advantage of being easy to mark and are to a certain degree indicative of mental ability.

Unassembled Examinations Although some of the beginning positions calling for technical and professional training are included under assembled examinations, the majority of these posts are in the unassembled category. In other words, candidates for a job

which requires professional training and a considerable amount of practical experience are not asked to present themselves at any one place for a written examination. Inasmuch as training and experience are the most important factors determining ability to fill these positions successfully, the candidate is required to submit a detailed statement of the courses he has taken in specified fields, the degrees he holds, the books and articles he has written, the investigations he has made, and the practical experience he has had in his profession. Transcripts of credits may be required from universities; references from those under whom one has received professional training or employment are necessary; and an essay of several thousand words describing qualifications and pertinent background may be submitted. Examiners in Washington draw up a scale of weights by which to rate the education and professional experience and thus arrive at a grade for each candidate. The grading of unassembled examinations is, of course, not a simple matter. Not only a civil service expert but also an expert in the field of the examination must read every submitted test.

Personal Interviews and Oral Examinations Either the assembled or the unassembled type of examination may include a personal interview or oral examination, but the latter is much more likely to require this supplementary test. The rank and file of positions of clerical or stenographic character can be satisfactorily filled on the basis of a written examination, since they do not involve personal qualities to the extent that do some of the higher executive posts. Of course, it is pleasant to have agreeable clerks and stenographers, but that is in most cases secondary. On the other hand, some well-trained technicians may be completely ineffective because they lack common sense, the ability to collaborate, and related qualities. A written examination does not indicate these personal endowments very clearly; nor will a rating based on educational and professional background always be an accurate measure of these very important factors, although the letters furnished by former employers and teachers of the candidate may throw some light on his strength or weakness. In order to ascertain character as opposed to intellectual qualities personnel bureaus frequently stipulate an oral examination or a personal interview with two or more examiners who have had experience in the field in which the position is classified. However, the federal Civil Service Commission has

not made the most extensive use of this device, despite the arguments that are adduced to support it. The large number of applicants makes an oral examination an even more burdensome affair than the unassembled examinations now employed—even they sometimes require a year or more to grade. The new plans of the Civil Service Commission call for the use of investigators to check previous experience by interviewing former employees. This substitute for oral examinations is worth watching.

Eligible Lists As soon as the candidates in an examination have been rated, an eligible list is prepared which contains the names of all who have received a grade of 70 or more, with the highest at the top and those having just 70 at the bottom. From these lists names are drawn as calls come in from various appointing agencies. Eligible lists are ordinarily valid for a year and may be extended by executive order if it seems desirable.

Veteran Preference The veterans of former wars have been a potent force in American political life. Not content with asking bonuses and pensions, the veterans feel that they are entitled to the first claim on the public jobs and through organized pressure groups have managed to secure preferred treatment for themselves. All honorably discharged veterans have five points added to their examination grades; veterans disabled in service, their widows, and the wives of veterans who are for any reason physically incapacitated receive ten points. Moreover, under executive orders if they have a passing mark, they may be placed at the top of the eligible list.[17] There is a raging controversy over the justification of this practice.

Certification When there is a vacancy in a department under the merit system, the appointing officer in that agency notifies the Civil Service Commission that an appointment or appointments are in the offing. The Civil Service Commission then proceeds to certify the three highest names on the appropriate register, or eligible list. When an eligible list is new, the names certified are of those who have grades as high as 90,[18] but as appointments are made, names are removed until it may be necessary to certify people who

[17] This is ordinarily done only in the case of disabled veterans.

[18] Grades which range from 80 to 90 are considered quite high; in the Foreign Service examinations virtually no candidates ever receive more than 90. Grades in the 70's are not bad.

have a bare passing mark, unless a new register in the meantime supplants the older one. In asking for a certification, an appointing agency may make detailed specifications of the exact background which it desires a candidate to have. For the routine positions there is likely to be little of this, but when higher positions are involved, it is not uncommon to find specifications that eliminate many of those who are high on a register. In support of this practice it is urged that a certain job requires someone who has experience of a certain nature. Critics maintain, however, that this constitutes a loophole which permits appointing officers to disregard the candidates who have high grades in favor of their friends who scarcely more than passed.

Personal Interviews If an appointing authority is uncertain about the qualifications of the persons whose names have been certified, he may call them in for personal interviews. Inasmuch as it is scarcely feasible to summon those who live a thousand miles distant, a near-by person may be appointed. If no person of those certified is acceptable, it is possible to return the names and ask for another certification, although reasons must be given. If one person is chosen from among the three, the personnel office of the department will formally notify the fortunate one and the remaining two names will be returned to the Civil Service Commission, which will replace them on the eligible register.

Provisional Appointment Appointments under the merit system are made on a provisional basis until the appointee has served a probationary period of six months or a year. If he does not prove satisfactory, he may be dropped without undue difficulty during that initial period.

Apportionment among the States Congress has been fond of stipulating that civil service appointments shall be apportioned among the several states according to population unless no eligibles are available from certain states.[19] This requirement violates a cardinal principle in modern personnel administration and has been severely criticized. In reply the proponents of the requirement argue that candidates with equal qualifications should not be penalized

[19] See United States Civil Service Commission, *Federal Employment under the Merit System*, Government Printing Office, Washington, 1941, pp. 51-52, for the current practice.

because they happen to reside some distance from the national capital, adding that many departments in Washington are reluctant to hire anyone without an interview and consequently call in those who live in the District of Columbia and the near-by states of Maryland, Virginia, and Pennsylvania.

Classification For many years there was no particular relationship between the nature of the work of a given job and its title and compensation. Thus an employee in one department might receive several hundred dollars more or less each year than someone doing exactly the same sort of labor in another. In 1923 Congress created a Personnel Classification Board to study the matter and report to Congress such recommendations as seemed desirable. This board after much delay finally did classify the merit system positions in the District of Columbia, but it was abolished before it did anything about the 85 per cent or so of the federal employees outside of Washington. At present a personnel classification division of the Civil Service Commission is engaged in carrying on elaborate studies which are to constitute a basis for a nation-wide classification plan.[20] At present there are four general classes in the competitive service: (1) professional and scientific, (2) subprofessional, (3) clerical, administrative, and fiscal, and (4) custodial, protective, and clerical-mechanical.

Compensation In comparison with foreign governments, or the state and local governments in the United States, the federal government pays rather generous salaries to its employees. Even so, there has been a considerable amount of criticism aimed at the salary scales. Naturally, federal employees would like a higher level all along the way and their organizations are constantly working for increased salaries. Those who occupy the positions at the top ask for particular sympathy, for their maximum of $9,999 is, they maintain, far less than corresponding positions command in private employment. Those who would increase the attractiveness of public employment frequently argue that the rate of compensation is a major obstacle to any widespread interest on the part of ambitious

[20] For a much more detailed discussion of classification by one who has been intimately associated with the problem in the federal government, see Ismar Baruch, *Some Facts and Fallacies of Classification*, Civil Service Assembly of the United States and Canada, Chicago, 1935.

and capable people.[21] The majority of the clerks and stenographers receive from $150 to $250 per month, while the ordinary compensation of more highly trained persons ranges from $200 to $600 per month. In general, the federal government pays higher salaries to its clerks and stenographers than private employers offer, especially outside of Washington. Also, beginning salaries for professional and scientific employees are somewhat higher than is customary outside the government service. However, the maximum civil service remuneration is far under that which corporations and private firms at times maintain. Substantial increases in federal pay scales were authorized in 1945 and again in 1946. Proposals to create new grades above those now provided, with annual salaries up to some $14,000, may be adopted to meet the situation.[22]

The Problem of Promotions Governments the world over have had more trouble with their promotion systems than with almost any other personnel problem.[23] Tenure is important of course; adequate salary scales are basic; prestige plays a large role; and retirement allowances are necessary. But even if these are all satisfactory, there is serious weakness unless an adequate promotion plan is in operation, for one of the first questions that able young people ask about any occupation is "What about the future?" The easiest basis for determining promotions is that of seniority; in other words, promotions depend wholly upon the length of service one can show. Needless to say, this system does not appeal to ambitious and energetic young men who are not satisfied to remain near the bottom for many years. Nor does it provide much incentive to superior performance of duty, for under seniority promotion is virtually automatic despite the quality of work. No one is very

[21] For an unusually objective discussion of this point, see Lewis Meriam, *Public Personnel Problems from the Standpoint of the Operating Officer*, Brookings Institution, Washington, 1939, pp. 112ff.

[22] Lewis Meriam, while admitting that the resignation of top employees whom the government has spent much time and money training is a serious problem, questions that merely raising the top pay is a worth-while expedient. He says: "Raising the government's bid may only serve to force private enterprise to raise its bid and thus enhance the attractiveness of the particular agency as a training school." *Public Personnel Problems*, Brookings Institution, Washington, 1939, p. 112. It would seem from that, then, that the prestige value is a far more important consideration than salary in the higher executive posts.

[23] See, for example, Leonard D. White, *The Civil Service in the Modern State*, University of Chicago Press, Chicago, 1930.

eloquent in support of seniority, but the question of what to substitute is exceedingly troublesome. Any other system is likely to be open to charges of favoritism from employees themselves as well as the general public.

Service Ratings and Promotional Examinations Although in the federal service some consideration is given to seniority, service ratings and promotional examinations have played a large part in determining salary increases and promotions in rank. Service ratings are given employees by their supervisors and communicated to the Civil Service Commission for preservation as part of the personnel records. Employees are rated on such items as industry, initiative, neatness, promptness, co-operation, and ability to take criticism. The Pendleton Act specified that no official under the merit system shall be promoted "until he has passed an examination, or is shown to be specially exempted from such examination." This has been supplemented by executive orders requiring the same technique. In practice, however, this does not always work out well, for some rather mediocre people have a flair for examinations, while other very good ones somehow or other fail to show up at all creditably.

Retirement Provisions It is the practice the world over to provide retiring allowances for public servants. Indeed this has been advanced as one justification for not paying higher salaries during active years. However, it was not until 1920 that Congress finally set up a general retirement plan for federal employees, although it had been considerate of the claims of war veterans for many years. The act of 1920, with several subsequent amendments, provides for a compulsory pension scheme to be largely, although not entirely, supported by the contributions of the employees themselves.[24] Amounts equal to 5 per cent [25] of the salaries of merit system employees plus a federal contribution of $1.00 are set aside each month in a pension fund. If additional amounts are required to meet the claims on the fund, appropriations are made from the public treasury. Prior to 1942 some employees retired at sixty-two and sixty-five; now all must surrender active duty at sixty-five years of age.[26] For many years the maximum annual retiring allowance was

[24] Some governments, including England, do not require contributions from employees.

[25] Prior to 1942 the rate was 3.5 per cent.

[26] During the war years this rule was not enforced.

$1,200, but many of the higher officials complained at this rate on the grounds of inadequacy and the size of the deductions from their salaries, pointing out that foreign governments sometimes permit their retired employees to draw as much as half of their salaries, at times without demanding contributions. To meet these objections the amendments added in 1942 provided that a civil servant who has been active for thirty-five years can qualify for an annuity equal to one half of the average salary received during any five years of public employment.

Sick Leave and Vacations The policy of the government regarding sick leaves and vacations is more generous than that of most private concerns. Until a few years ago there was no uniformity of practice in granting vacations with pay, but this has now been regularized throughout the classified service. Fifteen days' absence every year on account of illness is permitted without deduction in pay, while twenty-six business days are given on pay for vacation purposes.[27]

Disciplinary Actions Although public employees under the merit system enjoy what is usually designated "permanent tenure" after they have passed their probation, they are subject to disciplinary action and even to removal for cause. Neglect of duty, regular tardiness, and infraction of rules and regulations may be penalized by a reprimand, a reduction in rank, and suspension for periods not to exceed seventy days with loss of pay.[28] There are many such cases every year.

Removals If the position which an employee holds is abolished as a result of an economy act or the consolidation of departments, he has no recourse. However, his name is placed on the lists of the Civil Service Commission and, if he can find a vacancy which calls for someone with his qualifications, he may demand prior consideration. As long as his job remains, he cannot be separated from it unless he has proved quite incompetent, dishonest, undisciplined, or otherwise unsatisfactory. Ordinarily it is said that a civil servant can only be removed for the "good of the service," the formal procedure of which requires a written notification of the

[27] However, during the period of the war vacation leave was suspended or at least severely curtailed. Even ordinary holidays were not always observed.

[28] See United States Civil Service Commission, *Federal Employment under the Merit System*, Chap. 11.

charges lodged against him. The accused then has the right to reply to those charges, but he is not guaranteed an oral hearing,[29] although he may be given one out of courtesy. There is no board or court to which he may appeal, but it is quite possible that his labor union will intercede on his behalf. The lack of an appeal makes the tenure somewhat meaningless on a legal basis, for the "good of the service" permits the supervising officer to fire an employee on almost any grounds, although the law specifically prohibits removal for refusal to contribute money to a political party. In practice, however, tenure is usually quite secure. Nevertheless, 124,900 persons were discharged for cause (not merely laid off) during April 1—November 30, 1945.

In-service Training Although the federal government has expected candidates for public positions to have at least some previous training to fit them for their jobs, it is now engaged in a fairly elaborate in-service training program.[30] Many of the employees have had only a modicum of preparation; others were trained so long ago that their knowledge is out of date; while still others are ambitious to prepare themselves for additional responsibilities. The universities located in Washington offer many courses especially for government employees after office hours. After lengthy discussion the government departments have agreed that they must assume the responsibility to provide more adequate training programs. The Department of Agriculture has long held first place in this matter and now operates a graduate school with more than two thousand students enrolled. The Census Bureau provides courses dealing with statistical problems, state and local government, population, and other topics. A number of courses are offered dealing with the general problem of administration; others stress public personnel administration; and still others involve fiscal problems.

Organizations of Public Employees As far back as the closing years of the nineteenth century certain employees of the federal government found it to their advantage to organize themselves into associations.[31] As the movement became stronger, the employee

[29] In state and municipal civil service systems the right of an oral hearing is often given.

[30] See E. Brooks, *In-Service Training of Federal Employees*, Civil Service Assembly of the United States and Canada, Chicago, 1939.

[31] Letter carriers organized as early as 1889 and post-office clerks the following year.

associations took on the characteristics of labor unions, although they did not designate themselves as such. In 1912 Congress was persuaded to recognize the right of federal employees to organize and to petition Congress. Since 1920 the movement has made great headway, until something like 90 per cent of the employees in Washington are claimed by the various associations. A National Federation of Federal Employees, formerly affiliated with the A.F.L.,[32] has a large membership drawn from numerous agencies. The United Public Workers enroll many of the employees of the newer federal agencies and maintain relations with the C.I.O. The letter carriers, railway mail clerks, and postmasters have their own independent organizations.

Accomplishments of Employee Organizations Whatever one may think about the place of employee organizations in government, it must be admitted that a great deal has been accomplished by those associations to improve working conditions. The salary scale, the pension system, sick leaves, equal pay for the same work, and uniform vacation rules, holidays, closing hours, and so forth, are all largely the result of the efforts of the several associations of federal employees.[33] These associations have protected their members against the unreasonable demands of thoughtless administrative officials who, in their zeal to show that their agencies are indispensable, have required night work four or five times each week without additional compensation.[34] The associations have pledged themselves not to use the strike as a weapon against the government and have actually denied themselves the use of that device in their dealings with the department heads or Congress.

Selected Bibliography

Baruch, Ismar, *Some Facts and Fallacies of Classification*, Civil Service Assembly of the United States and Canada, Chicago, 1935.

[32] This organization withdrew from formal relations with the A.F.L. in 1931, although it continues to represent the A.F.L. point of view.

[33] Nevertheless, the associations have by no means always had their way. For example, an attempt of the powerful post-office groups in 1941 failed to bring about a 2.5 cents per hour increase in letter-carrier compensation.

[34] Some of this overtime work has been necessary and the employee organizations have permitted a reasonable amount, but where overambitious executives want to establish a record by constant night work it has been insisted that they employ extra stenographers for that time.

Brooks, E., *In-Service Training of Federal Employees*, Civil Service Assembly of the United States and Canada, Chicago, 1939.

Commission of Inquiry on Public Service Personnel, *Better Government Personnel*, McGraw-Hill Book Company, New York, 1935.

Device, J. E., *Post-Entry Training in the Federal Service*, Civil Service Assembly of the United States and Canada, Chicago, 1935.

Employee Training in the Public Service, Civil Service Assembly of the United States and Canada, Chicago, 1941.

Frederic, K. A., *Trained Personnel for the Public Service*, National League of Women Voters, Washington, 1935.

Friedrich, C. J., and others, *Problems of the American Public Service*, McGraw-Hill Book Company, New York, 1935.

Meriam, Lewis, *Public Service and Special Training*, University of Chicago Press, Chicago, 1936.

—, *Public Personnel Problems*, Brookings Institution, Washington, 1939.

Mosher, W. E., and J. D. Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941.

Short, O. C., *The Merit System*, State Employment Commission, Baltimore, 1928.

Smith, D. H., "The United States Civil Service Commission, Its History, Activities, and Organization," *Service Monograph 49*, Brookings Institution, Washington, 1928.

Spero, S. D., *Employer and Employee in the Public Service*, McGraw-Hill Book Company, New York, 1935.

Stewart, F. M., *The National Civil Service Reform League*, University of Texas Press, Austin, 1929.

United States Civil Service Commission, *Annual Reports*, Government Printing Office, Washington.

—, *Federal Employment under the Merit System*, Government Printing Office, Washington, 1941.

White, L. D., ed., *The Civil Service in the Modern State; A Collection of Documents*, University of Chicago Press, Chicago, 1930.

—, *Government Career Service*, University of Chicago Press, Chicago, 1935.

—, *Introduction to the Study of Public Administration*, rev. ed., The Macmillan Company, New York, 1939, Chaps. 18-29.

23 · National Finance, Money, and Credit

REVENUES

In 1789 the total expenses of the national government averaged only approximately $1.00 per capita; in 1948 federal revenues amounted to almost $300 per capita.[1] Of course, the aggregate wealth of the United States has increased far beyond the expectation of those who lived in 1789, thus making it feasible to raise vastly larger amounts. Nevertheless, a per capita national revenue of some $300 presents grave problems even in this day and age.

Basis of the Taxing Power The responsibility of finding income to meet, or partially meet, governmental expenditures has been entrusted by the Constitution to Congress, the exact authorization being as follows: "The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States." [2] The President may recommend action; the Treasury Department not infrequently advises Congress as to what is required and how the amount needed can best be produced; but the final action can be taken only by Congress.

TAX LIMITATIONS

In general, the authority to raise revenue is extensive and complete, which is appropriate. However, those who drafted the Constitution foresaw certain dangers that might arise in connection with this power and therefore they inserted several limitations that should be borne in mind.

[1] Approximately forty billion dollars came in. For the fiscal year of 1945 revenue was approximately $47,000,000,000.
[2] Art. I, sec. 8.

The Public-purpose Clause We have noted that the express grant of the power to levy taxes and other assessments concludes with the words "for the common defense and general welfare of the United States." This is often referred to as the "public-purpose" limitation and for many years has occasioned discussion among constitutional authorities. It is reasonably clear what is meant by "common defense," but "general welfare" presents a certain amount of ambiguity. Some students of the Constitution read into these words a broad grant of discretion which permits money to be raised for virtually anything which is regarded as desirable. Others maintain that the clause is not a positive bestowal of authority, but rather a limitation on the taxing power. Almost immediately after the terms of the Constitution were made public, some people began to interpret them as an "unlimited commission to exercise every power which may be alleged necessary for the common defense or general welfare." [3] However, the authors of *The Federalist* vigorously denied this assumption, branding it as "stooping to such a misconstruction." [4] For many decades the view expressed by *The Federalist* more or less prevailed.[5] The philosophy of the New Deal turned its back on such a negative concept,[6] with the result that the taxing power was widely used after 1932 to bring about certain ends.

The Uniformity Provision Immediately following the clause which confers the taxing power are these words: "but all duties, imposts, and excises shall be uniform throughout the United States." [7] The jealousy among the original states doubtless caused the insertion of this clause, for there was a fear that somehow or other action might be taken which would work a disadvantage to the commerce of the weaker states. Through the years this clause has been interpreted quite liberally, until it does not impose a very serious limitation on taxation at present. Net taxable incomes exceeding $500,000 are required to pay a tax exceeding 80 per cent, while net taxable incomes under $2,000 pay about 20 per cent; it would seem at first sight that this violates uniformity, but the

[3] *The Federalist*, No. 41.
[4] *Ibid.*
[5] See Chap. 18 above for additional discussion.
[6] See James F. Lawson, *The General Welfare Clause*, author, Washington, 1934.
[7] Art. I, sec. 8.

courts have ruled that uniformity requires equality only for those in the same circumstances.

Geographical Uniformity Nor does uniformity necessitate that all levies shall fall with equal weight on all sections of the country. Import taxes are mainly collected at ocean ports; tobacco excises paid by companies in North Carolina are out of all proportion to similar levies in states where there are few if any tobacco-manufacturing establishments. Uniformity does emphasize geography to the extent that imports of exactly the same character, in the same condition, and coming from the same place pay the same import tax.

Prohibition of Export Taxes Because the inhabitants of the southern states feared that they might be discriminated against under a system which permitted import taxes on goods brought to them and compelled them to pay export taxes on their agricultural products exported to England, a provision was inserted in the Constitution as follows: "No tax or duty shall be laid on articles exported from any state." [8] Many governments of the world do levy export taxes, finding them during normal times an important source of revenue, but this is not possible in the United States.

Apportionment of Direct Taxes Another limitation on the taxing power which goes back to the fears and jealousies existing among the original states is that which specifies that direct taxes must be apportioned according to population. The Constitution reads: "No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." [9] Before the end of the eighteenth century the Supreme Court had interpreted "direct taxes" as meaning poll taxes and taxes on land,[10] leaving various other types of taxes as of the indirect variety which could be levied freely without apportionment. It may be added that apportionment does not rule out direct taxes, but it makes them so difficult to administer that they have not been attemped for more than half a century.

The Question of the Income Tax In looking about for new sources of revenue to meet the expenses of the Civil War, Congress in 1862 enacted a law providing for the imposition of income

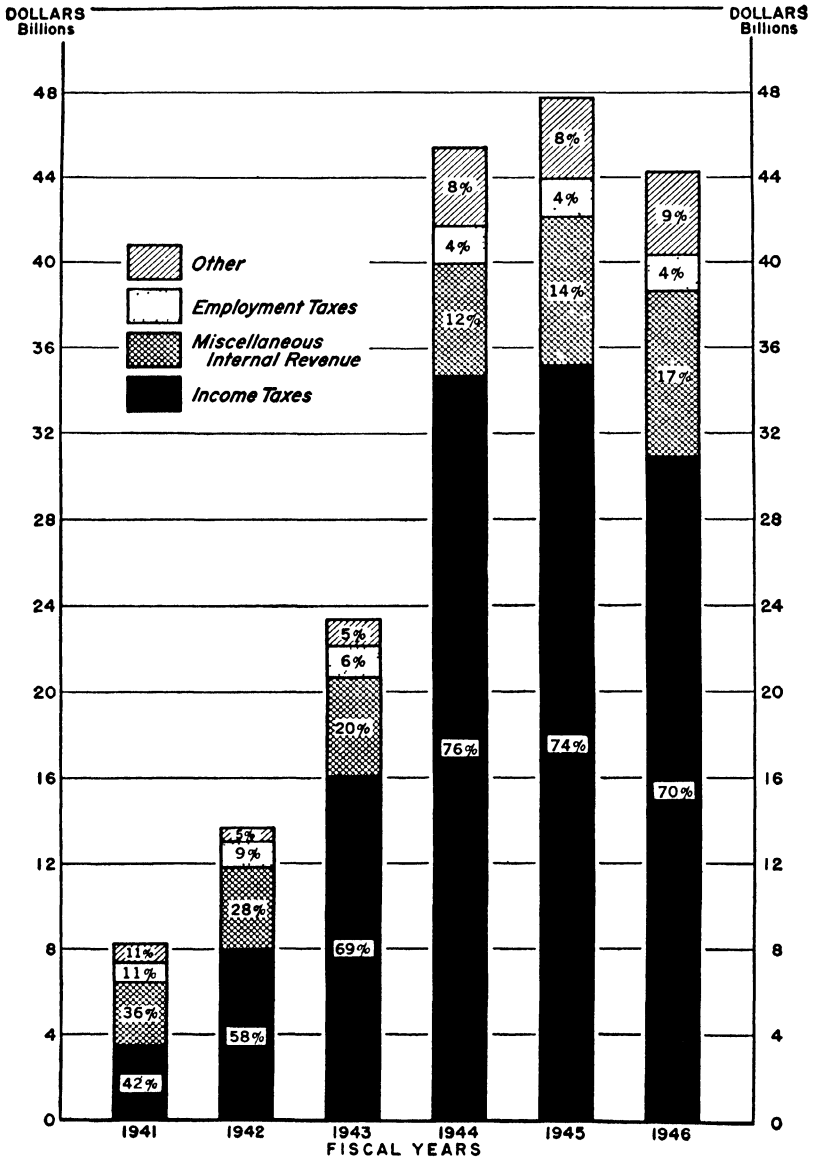
[8] Art. I, sec. 9.
[9] Art. I, sec. 9.
[10] See *Hylton* v. *United States*, 3 Dallas 171 (1796).

taxes without apportionment among the states on the basis of population. This law operated for a number of years and was finally repealed after the emergency was over. The hard times of the 1890's again led Congress to impose an income tax without apportionment among the states. Almost immediately an attempt was made to have this tax declared unconstitutional on the ground that a tax on income derived from land amounted to a tax on the land itself. A case involving wealthy New York parties reached the Supreme Court the next year after the law went into effect, and after two hearings and a change in the personnel of the court, it was finally held by a five-to-four vote that the law was contrary to the Constitution.[11] The Supreme Court did not go so far as to say that all income taxes are direct taxes, but it did rule out the tax on the income from land and state and municipal bonds, at the same time declaring that the entire law would have to fall because of these parts. An amendment to the Constitution was proposed to remove the barrier set up by this decision, and in 1913 the Sixteenth Amendment was proclaimed in effect, providing that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

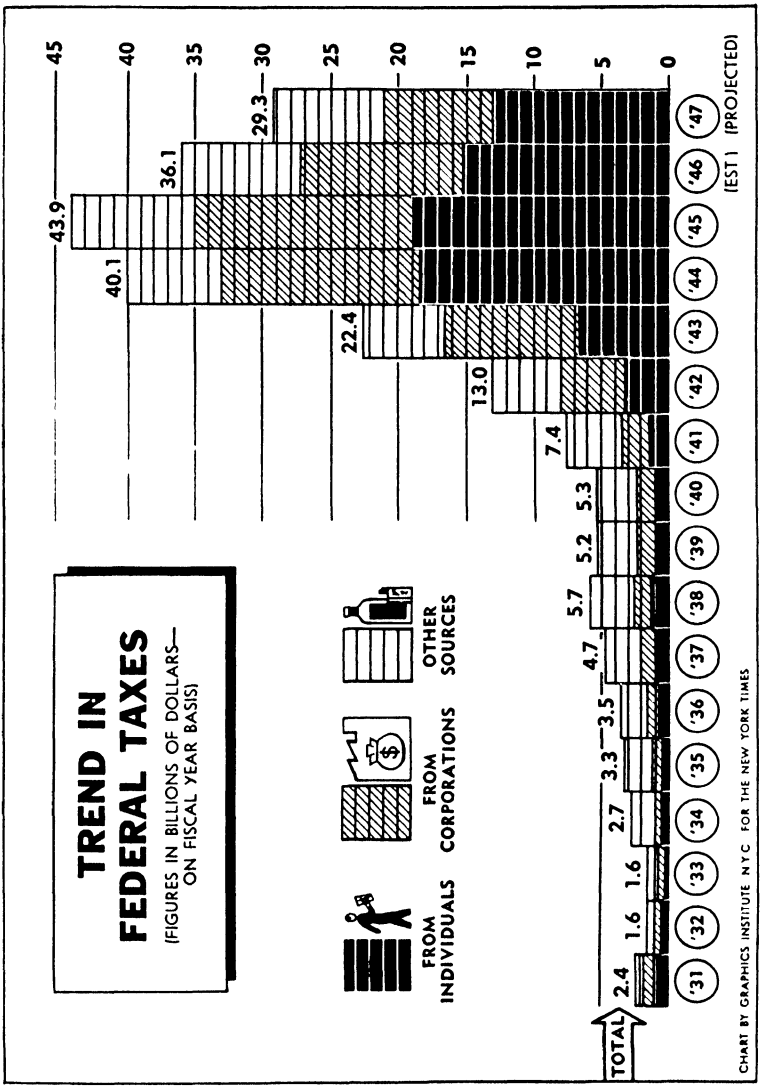
State Instrumentalities There is nothing in the Constitution which specifically states that the national government shall not tax the instrumentalities of the several states, but common sense dictates that under a federal form of government there must be cooperation rather than interference. In the opening years of the nineteenth century the Supreme Court gave its attention to this matter in the landmark case of *McCulloch* v. *Maryland*,[12] in which Maryland sought to tax one of the branches of the Bank of the United States. Laying down the rule that a state could not, through the medium of taxation, hinder the national government in the exercise of its power, the court stated that conversely the national government could not interfere with the states under such a guise. For many years the courts were very sensitive to any suggestion of encroachment, however slight it might be. However, in the middle 1930's the Treasury Department sought to collect income taxes from persons who were rather remotely attached to state pay rolls and

[11] See *Pollock* v. *Farmers' Loan and Trust Co.*, 158 U. S. 601 (1895).
[12] Reported in 4 Wheaton 316 (1819).

RECEIPTS, CLASSIFIED BY MAJOR SOURCES
FISCAL YEARS 1941 THROUGH 1946



Treasury Department.



in the New York Port Authority case the Supreme Court upheld that right. Growing out of that case there has recently come a general rule approved by both Congress and the state legislatures which permits the national government to tax the salaries of state

employees and the states to tax salaries of federal employees residing within their borders.

Regulative versus Fiscal Purpose The taxing power is ordinarily associated with the raising of revenue and has in general been employed for that purpose. At the same time it has far-reaching significance as a means of regulating certain practices which may be regarded as requiring attention. There is no direct constitutional prohibition against using the taxing power for regulatory purposes and Congress has at times not hesitated to wield this control. Yet at times the Supreme Court has refused to uphold a regulative tax when Congress has seen fit to adopt one. For example, the tax imposed on goods produced by child labor was invalidated on the ground that Congress could not do indirectly through the taxing power what it was not empowered to do directly.[13]

THE CURRENT TAX SYSTEM

Indirect Emphasis It has been pointed out above that Congress has not seen fit to levy direct taxes since the Civil War period, unless the income tax be put into that category. In general, there has been a definite effort on the part of the federal authorities to collect revenues which are not always fully apparent to those who pay them. That is not to say that there is any particular secrecy about the taxes levied, but the form is such that the average citizen has a vague idea of what is tax and what is the price of the merchandise. Advocates of economy in government maintain that it is positively vicious to hide or disguise so many of the federal tax exactions. They declare that citizens will favor all sorts of extravagances if they figure that someone else is paying for them, but that if they know that they themselves have to pay for what the government undertakes, there will be far greater caution and responsibility.

Income Taxes For many years income taxes have ordinarily stood first on the list of federal revenues, though the exact amount produced has varied widely from time to time. During the depth of the depression the receipts of this tax reached a point below $1,000,000,000, whereas in 1945 they exceeded $40,000,000,000. Income taxes levied by the national government are of the net variety

[13] See *Baily* v. *Drexel Furniture Co.*, 259 U. S. 20 (1922).

and apply to both individuals and corporations; they are regarded as perhaps the most equitable of all taxes because they are based on annual net income.

Excise Taxes The receipts which come in from various excise taxes are far less than those produced by income taxes, but they are still substantial. Though perhaps less complete in their coverage than such taxes in certain other countries, these taxes in the United States leave little untouched. They include such items as liquor, tobacco, and automobiles. They have produced more than five billion dollars per year and may bring in even larger amounts unless reduced or abolished after the war.[14]

Customs Receipts While the receipts of most taxes have increased, often even by several hundred per cent, the income from customs has declined during recent years.[15] Hence, though customs receipts once were one of the major sources of federal income, they now occupy a comparatively minor position on the list. In recent years customs duties have usually brought in less than 1 per cent of total revenues.[16]

Employment Taxes Since the enactment of the social security legislation increasingly large amounts have flowed into the treasury in the form of employment taxes paid by employees and employers. During recent years more than two billion dollars has been produced by such taxes.[17] Some of this money has been used to pay benefits under the social security program, but the greater part, not being required when benefits are low, has been invested in government bonds.

THE TREASURY DEPARTMENT

The collection of the revenues of the United States, the custody of funds, and the paying of bills is entrusted to the Treasury Department. Today this department is one of the largest departments in point of staff and its head ranks second only to the Secretary of State in the cabinet.

[14] In 1947 excise taxes brought in $7,270,000,000. Estimates for 1948 and 1949 are $7,320,000,000 and $7,476,000,000 respectively.

[15] The decrease has not necessarily been steady every year.

[16] The exact amount was $494,000,000 in 1947, slightly over 1 per cent, but for 1949 the estimate is $378,000,000.

[17] The exact amount in 1947 was $2,039,000,000.

Collection of the Revenue The revenue received by the United States is collected in the main by two large services: the Bureau of Internal Revenue [18] and the Customs Service.[19] Every state has at least one collector of internal revenue who is assisted nowadays by large numbers of deputies and office workers. Income taxes, inheritance taxes, excise taxes, liquor and tobacco imposts, amusement taxes, old-age and survivors pay-roll taxes, and a host of other federal exactions are paid into these district offices rather than directly into the Treasury at Washington. In a similar fashion the United States is divided into districts for the collection of customs, though the number of subdivisions is not so large.

Custody of Funds After the collectors of internal revenue and customs receive the revenues payable the United States, they deposit them to the credit of the United States in approved banks and in the twelve federal reserve banks. They are paid out by these depositories upon presentation of federal checks which are made out by the disbursing section of the Treasury Department on the authorization of the Comptroller-General's office. Ordinary funds are, therefore, not gathered together in Washington at all. In addition to current funds, the Treasury, of course, has to keep billions of dollars of gold and silver which are owned by the United States. Vaults for the storage of gold have been constructed by the Treasury in Kentucky and Colorado, and a similar storage place for silver bullion is located at West Point, New York.

Keeping of Records One of the chief functions of the Treasury Department in Washington is to keep the complicated records of the receipts and disbursements of the United States. Prior to 1940 the Treasury maintained ten divisions which handled various fiscal matters, but these were consolidated into a coordinated Fiscal Service, headed by an assistant secretary. At present this service is divided into three subdivisions: Office of the Treasurer of the United States, Bureau of Public Debt, and Bureau of Accounts, the last of which is entrusted with the large amount of work having to do with financial records and accounts.

[18] For a detailed treatment of this bureau, see L. F. Schmeckebier and F. X. A. Eble, "The Bureau of Internal Revenue," *Service Monograph 25*, Brookings Institution, Washington, 1923.

[19] See L. F. Schmeckebier, "The Customs Service," *Service Monograph 33*, Brookings Institution, Washington, 1924.

THE GENERAL ACCOUNTING OFFICE

The Treasury Department collects, has custody of, and disburses federal funds, but it is dependent upon the General Accounting Office which was set up by Congress to check the receipts and expenditures of the United States. This office is directed by a Comptroller General who is appointed by the President with the consent of the Senate for a term of fifteen years and is removable only by joint resolution of Congress or in extreme cases by impeachment.

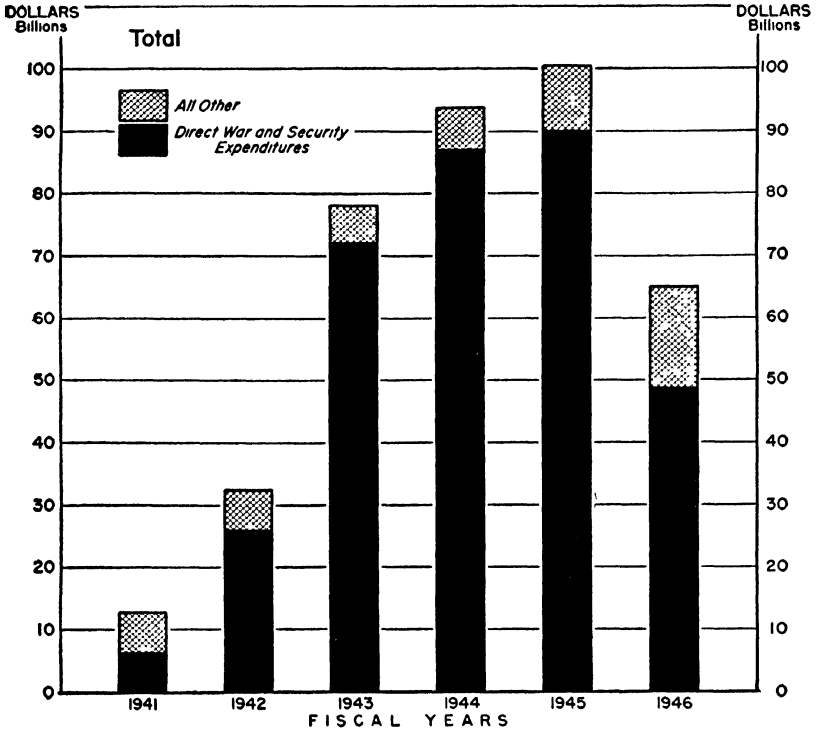
General Functions The General Accounting Office performs several important functions which are of interest to students of American government. Congress, as we have noted, authorizes expenditures by passing appropriation acts, but the actual expenditures are made by the various agencies of the government which employ workers, purchase supplies, and make capital outlays. After these spending agencies have drawn up forms which certify that personal service has been performed or supplies furnished, the General Accounting Offic has to examine the claims to ascertain whether they are authorized by Congress. This work is done quite meticulously, though in order to expedite payments it may be some time after money has been paid out that errors are discovered. The financial records of the various departments are regularly checked by agents of this office for purposes of audit, while the accounts of the collectors of internal revenue and customs are inspected to see that revenues have been properly collected and handled. Regular reports are made on the financial state of the nation to Congress.

EXPENDITURES

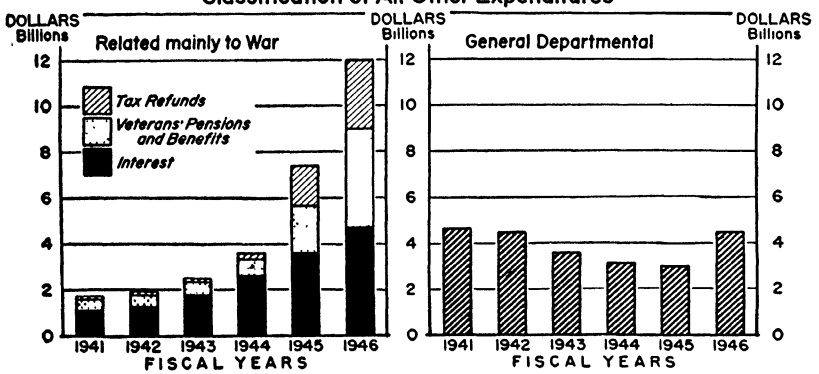
As populations increase, governments find it necessary to expend larger and larger sums, which are out of all proportion in most cases to the rate of population growth. Old functions become more complicated and require more elaborate machinery staffed by greatly enlarged numbers of public employees. Congestion brings in its wake new problems which more often than not are such that the government must step in. Rising standards of living are quite naturally accompanied by the expectation that the government will

EXPENDITURES, CLASSIFIED BY MAJOR PURPOSES

FISCAL YEARS 1941 THROUGH 1946

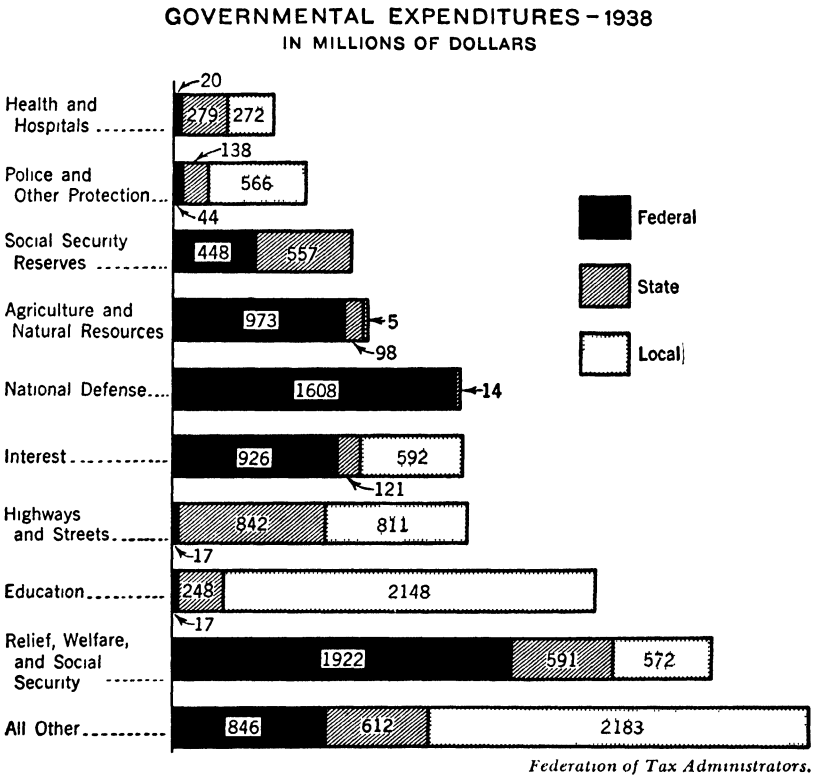


Classification of All Other Expenditures



Treasury Department.

furnish additional services or improve the quality of those long rendered. A national emergency, either brought on by internal depression or international threats, leads to the expenditure of vast sums of public funds for relieving distress or preparing for national defense.



EXPENDITURES OF ALL GOVERNMENTS IN THE UNITED STATES PRIOR TO WORLD WAR II

The Striking Rise of Expenditures in the National Government It would be utterly impossible for one who had not been in contact with the United States during the last third of a century to conceive of the heights to which public expenditures have risen. As a matter of fact, recent expenditures have reached such propor-

tions that the ordinary citizen has little inkling of the amounts involved, for he has nothing in his background which enables him to conceive of what $50,000,000,000, $75,000,000,000, or even $100,000,000,000 actually is. Per capita cost averaged $5.26 during the years 1789-1913; it arose to $64.55 during the three years 1933-1936; it approximated $700 in 1945; but it fell to some $300 in 1947.

Where the Money Goes The traditional functions of the national government are hardly inexpensive, but they account for a comparatively small proportion of the total expenditures. The total cost of the legislative, executive, and judicial branches and general government runs to a billion or so a year.[20] The cost of national defense, including pensions and assistance for veterans of past wars and the maintenance of armed forces, has long been heavy. Recently over half of all federal expenditures has been directly or indirectly for such a purpose.[21] Many of the special projects which have been undertaken by the national government since 1933 involve very large sums of money. Aids to agriculture, general public works, social security programs, international assistance and various other items account for some billions of dollars every year. Interest on the public debt, despite low interest rates, requires five billion dollars or so each year.[22]

Economy in Government Despite the general apathy as far as federal finances are concerned, there are always voices in the wilderness calling for economy. Even when money was being poured out as never before to carry forward the national defense program, there were those who lifted their voices to plead for reductions in other fields. It is easy to urge economy in government, but it is far from easy to effect that economy. Interest is fixed and cannot be reduced much if any. If everything were taken from the legislative, executive, and judicial branches, it would amount to less than a drop in the bucket. The ordinary civil agencies may seem to spend freely, but it is questionable how severely their staffs could be pruned without serious embarrassment or their supplies reduced enough to bring about important savings. This

[20] The total was $884,000,000 in 1946 and $1,318,000,000 in 1947.

[21] Direct defense costs ran to $84,530,000,000 in 1945 and $14,280,000,000 in 1947. Veterans' programs cost $7,370,000,000 in 1947.

[22] The exact amount was $4,958,000,000 in 1947; the estimated amount in 1949 $5,250,000,000.

means that the principal fields remaining are those involving subsidies to farmers, social security, pensions, and public works. If all of these items were to be dropped, enormous savings could, of course, be effected—even if some of them could be abandoned or severely pruned consequential economy would result. But which ones are to be selected as victims?

Postwar Budgets It is not easy to speculate on the budgets of the postwar years. Certainly there is every reason to expect a drastic reduction with the war brought to a successful conclusion, but the cost of war has a way of prolonging itself for years. Interest on the public debt, for example, will require almost as much as the entire budget expenditures of a few years ago, while veterans' benefits will undoubtedly be an expensive affair for some years. The Brookings Institution has been bold enough to estimate the cost of running the national government during the postwar years at $22,300,000,000 per year, but recent experience hardly bears out such a prediction.

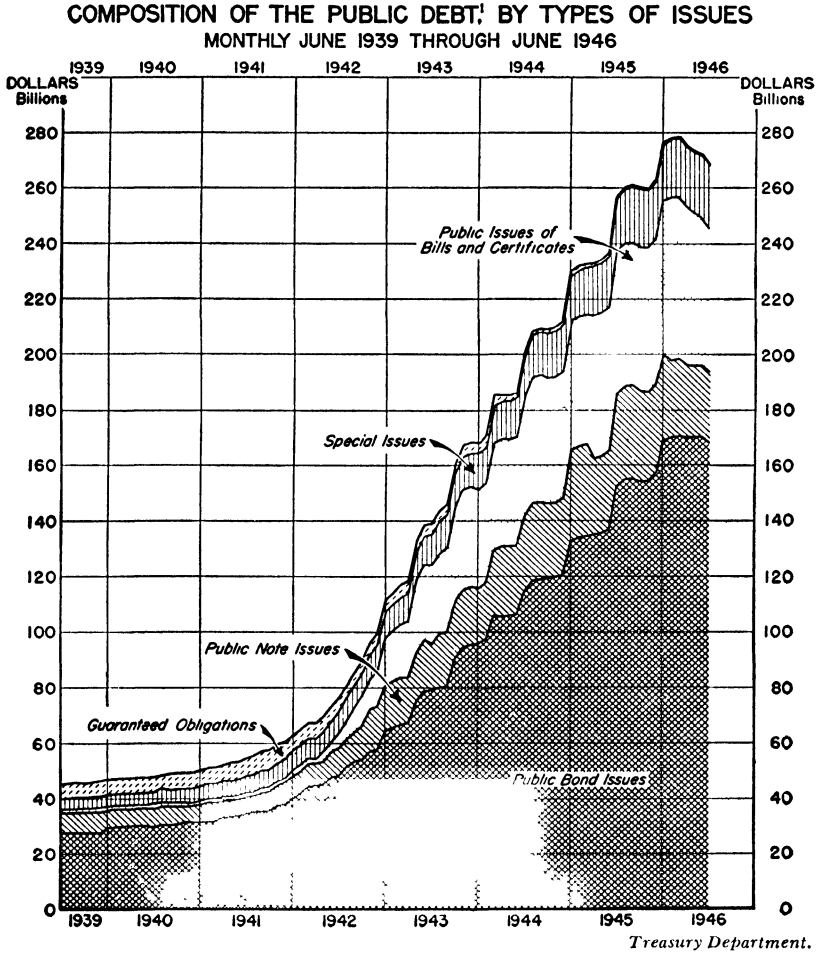
THE NATIONAL DEBT

The enormous deficits in the last decade of federal financing have contributed to a national debt which can easily claim first place in the entire world or in all history. Prior to World War I the United States owed only about $1,000,000,000, which was negligible considering the resources of the country. What seemed at the time an unprecedented pouring out of public funds built this nominal sum up to $25,000,000,000 at the close of the war. The government attempted to retire as much of the debt as possible during the 1920's, so that by 1930 the total only slightly exceeded $16,000,000,000.[23] The New Deal program did little to increase the national revenues, but did assist materially in adding to the indebtedness. When the national defense program began to operate, the debt stood just under $45,000,000,000. By early 1946 an actual indebtedness of 279 billion dollars had been reached, but this had been lowered to approximately 250 billion dollars by 1948.

"We Owe Ourselves" It is often averred that we do not need to worry unduly about our national debt because we owe ourselves. This sounds comforting because if you owe yourself you

[23] The lowest figure was $16,185,308,299 in 1930. See statement of Treasury Department.

are presumably always solvent and can easily settle accounts by transferring assets to the credit column. Unfortunately the actual



THE NATIONAL DEBT

situation is far more complicated than it sounds. It is true that comparatively small amounts of our gigantic debt are owned by citizens of foreign countries. If everyone owned government bonds in equal amounts or according to his wealth, it would be possible

to use cancellation, but even the most unsophisticated person knows that this is not the case. If bank savings and life insurance policies were held only by well-to-do people, it might be possible to cancel them without paralyzing the entire national economy—at least from the point of view of those who are anxious to distribute the wealth more widely.

Types of Borrowing The federal government uses at least two general types of financing: "long term" and "short term." The former refers to borrowing money by the sale of bonds with a life period of one to three or more decades. Short-term borrowing is employed to supplement the long-term bonds, sometimes because the market is not favorable to the issuance of long-term bonds, sometimes to provide temporary financing, and again because the amount required is hardly large enough to warrant the issuing of formal bonds. Short-term borrowing uses notes, bills, and certificates of indebtedness which run from thirty or sixty days to a year or two years. When they mature, either more short-term securities or long-term bonds may be issued to provide money for their payment, or they may be retired through the use of current revenues. Long-term bonds are retired when they mature either by issuing new bonds to replace them or by full payment from sinking funds built up by contributions through the years. Federal bonds are frequently refunded before they mature since they usually contain a provision which permits the government to call them in for payment after a certain date.

Indirect Obligations In addition to the bonds, notes, and bills which the government issues directly, it has authorized certain of its agencies, especially government corporations, to borrow money through the sale of securities. Some of these are not guaranteed by the federal government, but most of them are. At the close of a recent fiscal year there remained outstanding $14,287,401,956 of these securities. The R.F.C., F.C.A., H.O.L.C., and T.V.A. are examples of government agencies which have been permitted this authority.

THE BUDGET

Until after World War I the national government managed to get along without any systematized scheme of national expenditures. Some nine standing committees of the House of Representatives

drafted fourteen principal appropriation bills providing for the expenses of the various departments of government. The exigencies of the First World War brought the problem of co-ordination directly to the attention of the American people and led eventually to the passage of the Budget and Accounting Act of 1921, creating the Bureau of the Budget and the General Accounting Office. The Bureau of Budget is at present a part of the Executive Office of the President.

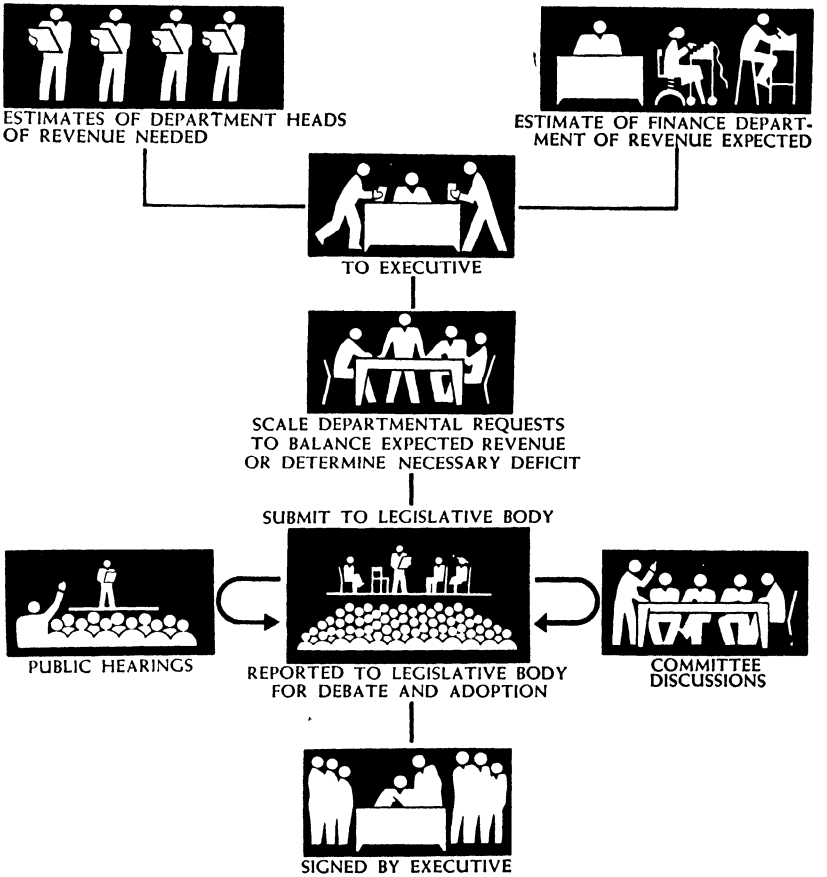
What Is a Budget? There seems to be more than the usual vagueness surrounding the term "budget." Citizens sometimes become sarcastic when they hear "budget" applied to the financial practices of the years 1932-1946, for they maintain that there can be no budgeting if expenditures far exceed income. If balancing is a primary requisite of a budget then it is true that we had no national budget for a decade or more. A more satisfactory definition places less emphasis upon the balancing aspect—though no serious person can ignore the far-reaching consequences of extensive deficit-financing—and stresses the financial planning involved. Under this concept expenditures are examined and finally proposed as carefully as possible; revenues also are considered with due care. The two should balance, but if unusual circumstances prevent that, then modern budgetary practice goes a step further and considers how the deficit can best be handled.

Preparing a Budget The average citizen not only lacks a clear understanding of the meaning of the term "budget," but he hardly knows anything about the steps in constructing it. The fiscal year of the national government does not coincide with the calendar year, beginning as it does on July 1 and ending the next June 30.[24] Preparations begin approximately a year before a budget is to become effective—policies and general investigations may have been given attention much earlier. During the summer the Bureau of the Budget requests estimates of their next year's expenditures from the various spending agencies of the government. Estimates of revenue yields are requested from the Treasury Department, which also is expected to furnish the necessary information in regard to interest on the national debt and amounts which are required for tax refunds, retirement of the indebtedness, and so

[24] President Roosevelt indicated in 1942 his dissatisfaction with the present arrangement and promised to try to effect a change to the calendar year.

forth. After these estimates have been prepared by the appropriate agencies, they are transmitted to the Bureau of the Budget early in the fall as a basis for its work in drafting the next budget.

STEPS IN FRAMING A BUDGET BILL



Pictograph Corporation for Ginn & Company.

Conferences and Hearings After the Bureau of the Budget has canvassed the estimates and obtained a general idea of the requests, it schedules conferences and hearings in order to go over the various items, especially those that are increased. General con-

ferences may be arranged between representatives of the bureau and of the particular department involved to discuss the estimates. It is the practice in many instances, however, to designate a staff member of the bureau to hold hearings on departmental requests. On these occasions representatives of the department appear before the examiner to argue their claims, show reasons why their requests are necessary, and answer the questions that may be put by the latter. As far as detailed items are concerned, these hearings may be very important, for they frequently determine whether requests will be approved. Of course, the director of the bureau and in the last analysis the President himself have the power to overrule the recommendations of the examiner, but this is not the rule in routine matters.

Assembling and Submitting the Budget The approved departmental requests, the revenue estimates, and the recommendations for handling any deficit are assembled into a budget and it in turn is submitted to the President for approval unless he has already given his consent step by step. Then the document is rushed to the Government Printing Office so that it can be transmitted to Congress by the President during the first week or so of January. It may be added that a budget usually runs to several hundred printed pages. After the President has laid the budget with his budgetary message before Congress, it is put through substantially the same process that we have noted in the case of an ordinary bill.[25]

Executing the Budget It is a common notion that the task of a budgetary agency ends after submission of a budget to the legislative body or at least upon passage of the appropriations by the latter. Actually, there is a great deal to be done after the budget becomes operative. The Bureau of the Budget has not until recently enjoyed the proper staff or the necessary authority to supervise the administration of the provisions of the budget. Consequently agencies have sometimes exceeded their appropriations without justification and Congress has had to grant deficiency appropriations at its next session. Despite the check of the General Accounting Office, agencies have even been able at times to devote public funds to purposes that were never authorized. The whole matter of transfer of funds is one which needs careful su-

[25] See Chap. 19.

pervision. Spending agencies can never be quite certain what demands may be made on them months and even more than a year in the future; floods, droughts, depressions, and wars upset the best of plans. Some funds may not have to be used as anticipated because of changed conditions. It is entirely proper then to transfer funds from one category to another if it is done under adequate supervision. The Bureau of the Budget is the logical agency to consider requests to authorize transfers and to recommend appropriate action to the President. The recently expanded bureau is devoting a considerable amount of time to these supervisory duties after the fiscal year has begun and a budgetary plan is in operation.

THE MONETARY SYSTEM

An Exclusive Function of the National Government We have already noted that many of the functions exercised by the national government are shared with the several state governments. However, the national government is expressly given the authority to "coin money, regulate the value thereof, and of foreign coin," [26] while the states are forbidden by the Constitution to "coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts." [27] It follows, therefore, that the monetary field is one which is occupied exclusively by the federal government.

The Decimal System Although the forefathers followed the English example in many particulars, they decided not to establish a monetary system based on the somewhat unwieldy English pound, shilling, and pence. The more easily computed decimal basis was then being discussed by monetary theorists, though few governments had been bold enough to put their recommendations into effect. The framers of the Constitution made no stipulation as to what Congress should do in this matter, but as early as 1792 an act, embodying the ideas of Alexander Hamilton, established a national monetary system based on the decimal relationship. The dollar was made the unit of our currency, being divided into 100 cents for purposes of petty transactions.

Paper Money At present only three types of paper currency are widely used in the United States. Federal reserve notes, which are issued by the federal reserve banks, now have a fairly

[26] Art. I, sec. 8 of the Constitution.
[27] Art. I, sec. 10 of the Constitution.

complete monopoly of the field above the $1.00 level, beginning with the $5.00 denomination and going through $10, $20, $50, and $100 denominations to $1,000 and even larger amounts for bank use. Silver certificates, issued by the Treasury Department on the basis of silver bullion, are very numerous in the $1.00 denomination, while United States notes, ranking a poor third in numbers and also put out by the Treasury Department, are still fairly important. Paper money is now used for settling most transactions where checks or drafts are not employed.

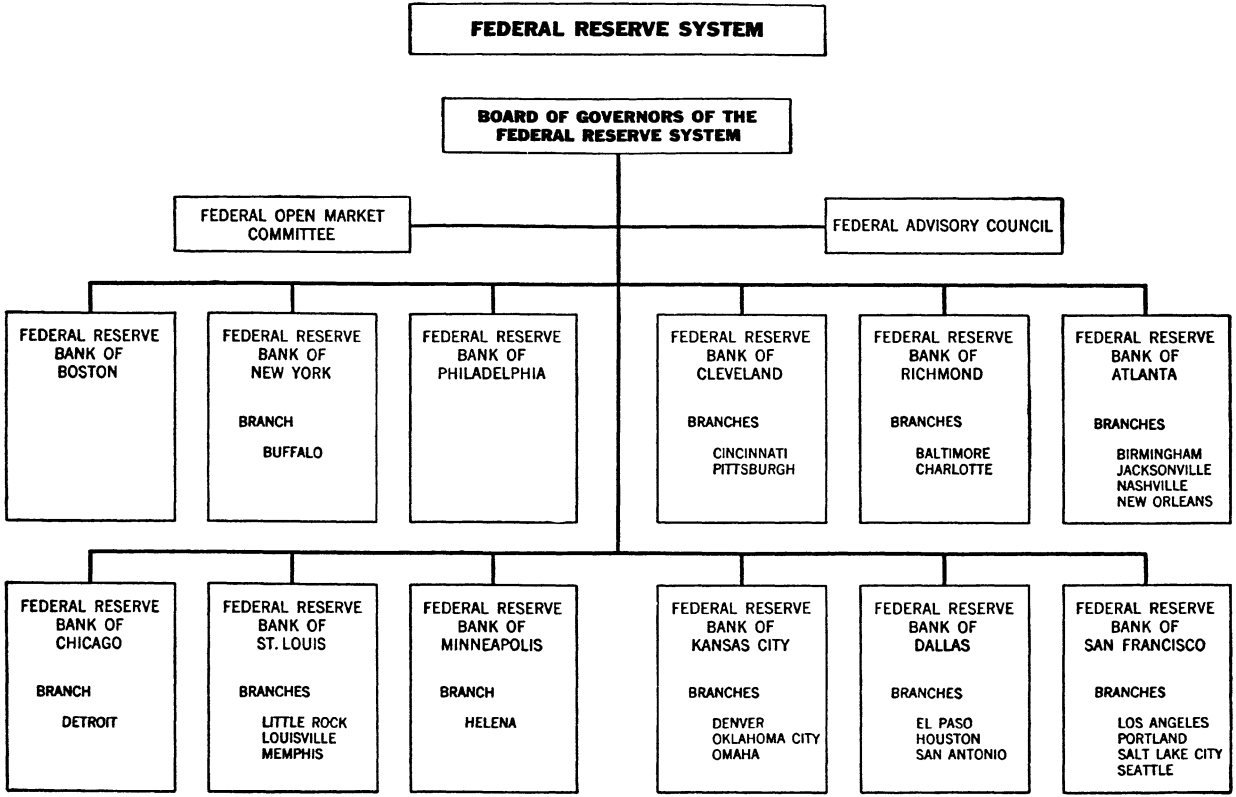
Metal Coins At one time in our history large numbers of persons were reluctant to accept paper money. They did not trust state bank notes nor Civil War "greenbacks" and hence their pockets clanked with silver dollars and gold eagles. Gold is now entirely out of the picture and silver dollars are almost a curiosity except in the West where some of the old fondness for metal still persists. In contrast to the silver dollar's lack of popularity, half dollars, quarters, dimes, nickels, and pennies circulate as never before. The mints have recently been working overtime to meet the demand and the pressure is so great that a new mint has been proposed.[28]

Bureau of Engraving and Printing The paper money of the United States is all manufactured at one plant in Washington, which also finds the time to print postage stamps and government bonds. Skilled engravers laboriously turn out by hand the plates used to print the paper money. The bills must be examined with care for possible defects, numbered, and registered before being placed in circulation through the federal reserve banks and the Treasury. A laundry is maintained for washing bills which have become soiled but which have not reached the stage where they have to be destroyed.

Mints The metal coins are manufactured by mints[29] located in Philadelphia, Denver, and San Francisco. These combined do not turn out anything like the value of money which is manufactured by the Bureau of Engraving and Printing, but they are, nevertheless, very busy. Considering the durability of a coin, one

[28] The total amount of money in circulation at the end of 1947 was $28,119,000,000—in contrast to approximately ten billion dollars in 1941.

[29] On the mints, see J. P. Watson, "The Bureau of the Mint," *Service Monograph 37*, Brookings Institution, Washington, 1926.



U.S. Government Manual.

may wonder where the money already turned out finally goes. The increase in population and the expansion of trade, especially the rise of the "cash-and-carry" chain stores, doubtless account for some of the output of the mints, but the tons of pennies, nickels, and dimes which are coined every week must far exceed any such requirement.

THE FEDERAL BANKING STRUCTURE

The Federal Reserve Board The most important element of the federal banking structure is the Federal Reserve System which has been in operation since 1913.[30] A Federal Reserve Board, which occupies an imposing building in Washington, is composed of seven governors, appointed by the President with the consent of the Senate for fourteen-year terms. The chairman of the board is considered one of the ranking members of the government, almost if not quite equaling a cabinet secretary. The authority granted to the Federal Reserve Board has varied from time to time, but it has in general increased through the years, until it is of far-reaching importance.

Functions of the Federal Reserve Board The board has general supervision over the twelve federal reserve banks which cover the entire United States, but perhaps more important than even that function is its power to formulate general policies. When an abnormal financial situation confronts or threatens the country, the Federal Reserve Board may attempt to restore balance, expanding or contracting the credit of the commercial banks by lowering or raising the rediscount rate.[31] The general theory upon which the board works is that the ups and downs of the business cycle are harmful to the national economy. Hence it unleashes forces which work in exactly the opposite direction of cyclical tendencies and help to stabilize business activity. Thus if in the depression sector of the business cycle the need for additional credit

[30] For additional discussion of the Federal Reserve System, see S. E. Harris, *Twenty Years of Federal Reserve Policy,* 2 vols., Harvard University Press, Cambridge, 1933; P. M. Warburg, *The Federal Reserve System,* 2 vols., The Macmillan Company, New York, 1930; and E. W. Kemmerer, *The A B C of the Federal Reserve System,* rev. ed., Princeton University Press, Princeton, 1938.

[31] The discount rate is the rate of interest banks charge when they lend money. The rediscount rate is, then, the rate of interest at which federal reserve banks lend money to commercial banks.

seems acute, the board may reduce the rediscount rate, which in theory at least will have the effect of encouraging banks to lend money at reasonable rates of interest and thus also encourage business activity. If, on the other hand, in the inflationary or boom sector of the business cycle it seems necessary to restrict business activity, the board may raise the rediscount rate to 5, 6, 7, or even a higher per cent, which causes the banks to increase their interest rates drastically and thus in theory seriously contracts the amount of credit available to business. Another method the Federal Reserve Board can use to expand or contract credit is "open-market" operations. In depression periods, the board can order federal reserve banks to buy commercial paper and bonds from commercial banks and thus supply the latter with cash, while in boom times it can order them to sell and thus take away cash from commercial banks.

Federal Reserve Banks Under the supervision of the Federal Reserve Board are twelve federal reserve banks which are located in large districts into which the United States has been divided. These banks maintain elaborate offices in key cities, retain fairly large numbers of employees, and have in each case a capital stock of not less than $4,000,000. At present the national government owns part of this stock and the member banks the remainder, but there is some agitation to have the government buy the bank-owned stock so that it will have even greater control than at present. The directors of each bank may determine the local rediscount rate subject to approval by the Federal Reserve Board in Washington and control the issuing of federal reserve notes in so far as the central board does not desire to intervene. All national banks must belong to and hold stock in the federal reserve bank of the district in which they are located; state banks may be members if they meet the requirements and if they find it advantageous.

Functions of Federal Reserve Banks The federal reserve banks do not carry on a general banking business with corporations or individuals. Rather they act as fiscal agents of the federal government and as banks for the local member banks. In the former capacity they sell federal securities, hold custody of public funds, transfer federal moneys from offices of the collectors of internal revenue or customs to the Treasury, pay government checks and interest coupons, and issue paper currency. It is obvious that they

relieve the Treasury of a heavy burden and are virtually indispensable to carrying on the functions of the national government. The services which federal reserve banks perform for their member banks are important, but they fall within the sphere of economics rather than that of political science. By way of summary, it may be said that they act as clearinghouses between banks not located in the same city, especially between banks situated in different sections of the country; that they keep on deposit the reserves of national banks,[32] thus reducing the danger of theft; and that they rediscount the commercial paper of member banks, thus making it possible for these local banks to meet the credit needs of their customers.

National Banks Scattered throughout the country are more than five thousand privately owned [33] banks which are designated "national banks." These banks have been chartered by the Treasury Department under a series of laws which go back as far as 1863. They must meet federal requirements in regard to capital stock, must be members of the federal reserve bank of the district in which they are located, and are regularly inspected by examiners who are attached to the office of the comptroller of the currency [34] in the Treasury Department.

Federal Deposit Insurance Corporation The banking crisis in 1933 frightened large numbers of people so much that it seemed unlikely that they would in the future trust banks unless some guarantee of deposit safety was made. The advisers to the President were of the opinion that a government corporation should be created to insure deposits of $2,500 or less (this was later increased to $5,000) in return for premiums to be paid by banks of 0.25 per cent on total deposits. Congress passed the necessary legislation and the Federal Deposit Insurance Corporation came into being. Currently it insures deposits in more than thirteen thousand banks.

[32] National banks are required to keep certain amounts available to meet demands made by depositors. The exact percentage varies, depending on whether a bank is a city or country bank.

[33] While these banks are in general privately owned, the federal government may own a part of their stock. This was not the case prior to 1933, but has been regarded as necessary to strengthen certain banks lacking sufficient capital.

[34] Although many changes have taken place since its publication, J. G. Heinberg's "The Office of Comptroller of the Currency," *Service Monograph 38*, Brookings Institution, Washington, 1926, is still worth consulting.

OTHER FEDERAL CREDIT AGENCIES [35]

Reconstruction Finance Corporation The Reconstruction Finance Corporation, which is the survivor of the Federal Loan Agency, is managed by five directors, of whom some serve by virtue of other federal offices they hold and the remaining ones are appointed by the President with the consent of the Senate. The chairman of the board of directors has increasingly made himself responsible for the actual administration of the corporation. The R.F.C. is financed by the government both through the direct medium of capital and the authorization to borrow money which is guaranteed indirectly by the government. The original capital of $500,000,000 has been increased substantially and borrowing authority in excess of $10,000,000,000 during World War II enabled the corporation to lend billions of dollars. The R.F.C. is charged with handling credit which cannot be furnished by private institutions and which does not come within the scope of other government credit agencies. Its lending authority and scope were sharply curtailed by Congress in 1947.

National Defense Role of the R.F.C. Despite the predictions that the R.F.C. might be wound up, its activities during the war years were such as to eclipse even its impressive depression role. It was early recognized that the successful prosecution of the war required the most vigorous mobilization of industrial resources of the country. But private industry, despite its large plant facilities, was not equipped to deal with production on anything like the scale required. Hence the Defense Plant Corporation was set up under R.F.C. to finance the purchase and construction of new plants and machinery.[36] Quite as pressing as equipment was the problem of supplies, especially with the rubber, tin, quinine, and other raw materials cut off by Japan. The Defense Supplies Corporation, the Rubber Reserve Company, the Metals Reserve Company, and other subsidiaries of R.F.C. were created to deal with such matters.[37]

[35] See Chap. 25 for a discussion of agricultural credit.

[36] The R.F.C. financed more than 3,400 war projects and disbursed about $8,500,000,000 for this purpose. Its total national defense authorizations amount to some $32,300,000,000. See *New York Times*, January 25, 1945.

[37] Operations in addition to national defense projects involved the following in 1945: loans to banks and insurance companies $3,395,400,000; loans to

Federal Housing Administration The Federal Housing Administration[38] was created in order to encourage home ownership by the many citizens who find it impossible to pay cash and yet have sufficient resources to justify acquiring such property. Contrary to a rather popular misunderstanding, this administration does not lend money; actually it insures loans which are made by banks, building and loan associations, and other private companies. Application must be made in detail to the local offices of the F.H.A., setting forth the improvements planned on existing property, the character of already built houses which the applicant desires to acquire, or the plans and specifications drawn up for new homes. The F.H.A. is based on the premise that loans for home acquisition should be liquidated gradually by payment of monthly installments. Hence it permits loans to run for as long as twenty-five years in some classes of buildings. There are no renewals, reappraisals, or calling of mortgages, such as characterized the private lending for this purpose. The only fees are those paid when the loan is taken out and they are insignificant in comparison with corresponding fees frequently charged by banks and loan companies. Maximum interest rates are stipulated—4.5 per cent for loans under $5,400 and 5 per cent for loans above that amount. An insurance fee of 0.25 per cent is added to the former rate and 0.5 per cent to the latter. Taxes, insurance, interest, and principal are all computed and combined in the single monthly payment that is specified before the loan is granted.

Federal Home Loan Bank Administration Less is heard of the Federal Home Loan Bank Administration[39] which supervises the Home Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation. During the worst of the depression when thousands of home owners were faced with the loss of their

railroads $1,503,700,000; loans to business and industry $2,838,400,000; loans for the benefit of agriculture $2,485,000,000; rural electrification and rural rehabilitation $1,011,500,000; and loans to school districts and so forth $831,700,000.

[38] The F.H.A. started out as an independent agency; later it was placed in the Federal Loan Agency; when F.L.A. was abolished in 1942, it was put in the new National Housing Agency. In 1947 it was made part of the Housing and Home Finance Agency.

[39] The F.H.L.B.A. is a division of the Housing and Home Finance Agency.

homes through mortgage foreclosure, a clamorous demand arose for government assistance. The result was the creation by Congress at the instigation of the President of the Home Owners' Loan Corporation. Those who were in difficulty could apply at their local branches of this corporation and if their situations seemed at all hopeful were granted assistance. The Federal Savings and Loan Insurance Corporation does in a general way for building and loan associations what the Federal Deposit Insurance Corporation attempts in insuring deposits in commercial banks.

Bretton Woods Agreement After lengthy debate Congress decided in 1945 to approve the Bretton Woods Agreement which provides for an international fund to stabilize world currencies and establishes a world bank to make foreign loans for reconstruction and development purposes. The United States contributes $2,750,000,000 of the $8,800,000,000 currency stabilization fund and makes a $3,175,000,000 subscription to the $9,100,000,000 capital of the world bank. Strongly supported by the Treasury and the administration forces these provisions are expected to have a very far-reaching influence on stabilizing world economy in the postwar period.

Export-Import Bank of Washington The Export-Import Bank was created in the thirties on a rather modest scale to provide certain special types of credit for international trade. It was hoped that loans made by this bank, whose stock is owned entirely by the government, would assist in maintaining a substantial business on the part of American business firms with foreign buyers, especially in Latin America. Fairly sizable loans were made to finance sales to Latin-American countries and to China, but the depressed condition of the world economy made the situation most difficult and seriously curtailed the activities of the Export-Import Bank. During the war period the bank carried on various transactions and had its capital increased to $700,000,000. But its primary role seems to involve the postwar period, with the return to large-scale private commerce and its complicated reconstruction problems. With this in mind, the Export-Import Bank persuaded Congress in 1945 to increase its capital further to $3,500,000,000 and outlined plans for making foreign loans in the immediate future approximating three billion dollars.

Selected Bibliography

Altman, G. T., *Introduction to Federal Taxation,* rev. ed., Commerce Clearing House, New York, 1940.

Bartelt, E. F, *Accounting Procedures of the United States Government,* Public Administration Service, Chicago, 1940.

Benson, G. S. C., *Financial Control and Integration—with Special Reference to the Comptroller General,* Harper & Brothers, New York, 1934.

Blakey, R. G., and G. C. Blakey, *The Federal Income Tax,* Longmans, Green & Company, New York, 1940.

Bogen, J. I., and others, *Money and Banking,* Prentice-Hall, New York, 1940.

Buck, A. E., *The Budget in Governments Today,* The Macmillan Company, New York, 1934.

——, *Public Budgeting,* Harper & Brothers, New York, 1929.

Buehler, A. G., *Public Finance,* rev. ed., McGraw-Hill Book Company, Inc., New York, 1940, Chaps. 17-18, 20-25.

Burgess, W. R., *The Reserve Banks and the Money Market,* Harper & Brothers, New York, 1946.

Crawford, A. W., *Monetary Management Under the New Deal,* American Council on Public Affairs, Washington, 1940.

Dewey, D. R., *Financial History of the United States,* rev. ed., Longmans, Green & Company, New York, 1934.

Disraeli, Robert, *Uncle Sam's Treasury,* Little, Brown & Company, Boston, 1941.

Ellis, P. W., *The World's Biggest Business; American Public Spending 1914-1944,* National Industrial Conference Board, New York, 1944.

Groves, H. M., *Financing Government,* Henry Holt & Company, New York, 1939.

Hansen, A. H., *Fiscal Policy and Business Cycles,* W. W. Norton & Company, New York, 1941.

Harris, S. E., *The National Debt and the New Economics,* McGraw-Hill Book Company, New York, 1947.

——, *Twenty Years of Federal Reserve Policy,* 2 vols., Harvard University Press, Cambridge, 1933.

Kemmerer, E. W., *The ABC of the Federal Reserve System,* rev. ed., Princeton University Press, Princeton, 1938.

Laughlin, J. L., *The Federal Reserve Act: Its Origin and Problems,* The Macmillan Company, New York, 1933.

Lewis, Verne B., *Budgetary Administration in the United States Department of Agriculture*, Public Administration Service, Chicago, 1941.

Magill, Roswell, *The Impact of Federal Taxes*, Columbia University Press, New York, 1943.

Mansfield, Harvey, *The Comptroller General*, Yale University Press, New Haven, 1939.

National Industrial Conference Board, *The Cost of Government in the United States*, the Board, New York, issued periodically.

Naylor, E. E, *The Federal Budget System in Operation*, Hayworth Printing Company, Washington, 1941.

Rist, C., *History of Monetary and Credit Theory*, The Macmillan Company, New York, 1940.

Seckler-Hudson, Catheryn, ed., *Federal Budgeting and the National Fiscal Policy*, American University Press, Washington, 1944.

Selko, D. T., *The Administration of Federal Finance*, Brookings Institution, Washington, 1937.

——, *The Federal Finance System*, Brookings Institution, Washington, 1940.

Shirras, G. F., *Federal Finance in Peace and War*, The Macmillan Company, New York, 1945.

Shoup, Carl, and others, *Facing the Tax Problem*, The Twentieth Century Fund, New York, 1937.

Smith, Harold D., *The Management of Your Government*, Whittlesey House (McGraw-Hill Book Company), New York, 1945.

Tax Research Foundation, *Tax Systems of the World*, rev. ed., Commerce Clearing House, Chicago, 1941.

United States Treasury Department, *Reports*, Government Printing Office, Washington.

Villard, H. H., *Deficit Spending and the National Income*, Farrar & Rinehart, New York, 1941.

Warburg, P. M., *The Federal Reserve System*, 2 vols., The Macmillan Company, New York, 1930.

Weissman, R. L., *The New Federal Reserve System*, Harper & Brothers, New York, 1936.

Weyforth, W. O., *The Federal Reserve Board*, The Johns Hopkins Press, Baltimore, 1933.

Willis, H. P., *The Theory and Practice of Central Banking . . . 1913-1935*, Harper & Brothers, New York, 1936.

Withers, William, *The Public Debt*, The John Day Company, New York, 1945.

24 · *The Government and Business*

The Constitution has little or nothing to say directly about the government and business, although it does refer to patents, copyrights, and bankruptcy which, of course, have an important bearing on the subject. The framers of the Constitution were for the most part men of affairs and certainly were not oblivious to the important role of economic enterprise. How then did they omit this sphere so largely from the Constitution which they framed to guide the destinies of the country? Perhaps, to begin with, they were conditioned by the environment in which they lived, which had the effect of concentrating their attention upon problems that had long been a source of irritation. Hence they conferred on the national government the power to levy taxes, the regulation of interstate and foreign commerce, and the duty of national defense. All of these had occasioned serious worry under the Articles because, though there was need for action, the central government had no means of dealing effectively with the problems. The regulation of business, on the other hand, was not something which had been uppermost in the public mind. Most of the business was local in character—there were no giant monopolies which stretched from one end of the country to another and in some respects possessed more power than the government itself. Consequently any regulation which was required could be furnished by the states and local governments. Finally, there was the general feeling that business, being without the province of government, should be left to private initiative as far as possible.

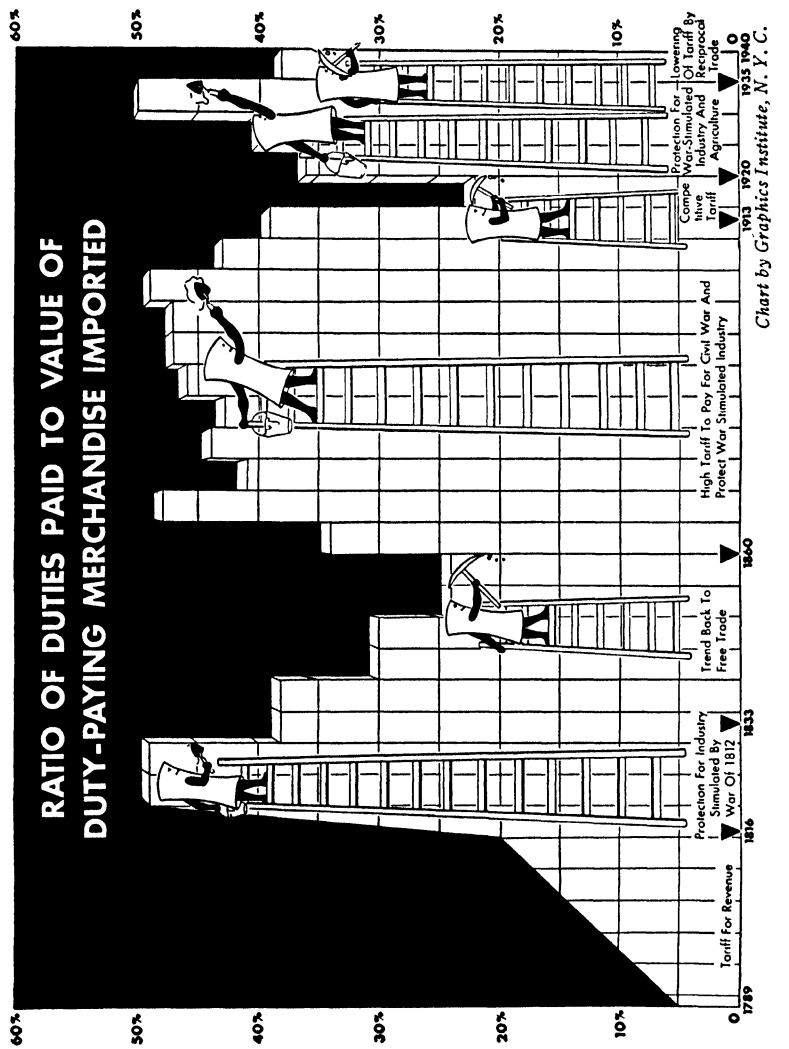
As the frontier was pushed westward until it finally vanished, and agriculture yielded the dominant role to industry, business came more and more into the public eye. The organization of certain types of business into corporations, with enormous resources and widespread activities, not only extended business enter-

prise beyond the borders of a single state but confronted the public authorities with a concentration of power such as they had not envisioned. When the practices of the monopolies conflicted with what was generally regarded as the public good, public opinion began to insist on government regulation.

Legal Basis of Business Regulation With the Constitution silent on the regulation of business and the national government one of enumerated powers, Congress was faced with the problem of finding some basis for any legislation which it would pass in this field. The most logical clause on which to build was the clause which conferred on Congress the power "to regulate commerce with foreign nations and among the several states";[1] consequently Congress sought to imply from interstate commerce the right to regulate general business. But the Supreme Court was not disposed to permit this, and in the Knight case, decided during the closing years of the last century, laid down the categorical rule that manufacturing, and indeed business in general until it involved the shipment of goods across state lines, was not included under interstate commerce. Thereafter, for more than a third of a century Congress found itself in a very weak position as far as regimenting business was concerned. As the years went by and economic problems occupied more and more the center of the stage, various attempts were made to expand the commerce clause, and occasionally the Supreme Court gave a certain amount of support. Speaking for the court in the Olsen case,[2] Chief Justice Taft in 1923 said that anything which materially affected the price of food, clothing and other necessities of life in more than one state could be regarded as interstate commerce and therefore subject to congressional regulation. Yet as Congress sought to put this concession into practice, the Supreme Court frequently found that the relationship was not sufficiently direct. In the Schechter case,[3] for example, the court stressed the point that incidental effect was not enough to invoke the commerce clause. Since 1937 the Supreme Court has shifted its position and now regards businesses which extend over more than one state as generally coming under the commerce clause. Thus after almost a century and a half the

[1] Art. I, sec. 8.
[2] *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1 (1923).
[3] *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495 (1935).

right of the national government to concern itself with the practices of industry has come in for clear recognition.



Early Relations of Government and Business Despite the impotence of the national government in regulating business prac-

tices which were detrimental to the public welfare, it must not be supposed that the relations between the government and business were purely formal. As a matter of fact some persons went so far as to maintain that the national government was little more than the creature of big business. This allegation is of dubious validity, but it is true that the influence of business was notable.

The Tariff Anyone who is acquainted with tariff history in the United States is well aware of the attention which Congress paid to the desires of the business men of the country who descended on Washington in droves when the word got around that a tariff revision was in the offing. This business group wanted protection against imported steel products; that business group asked for a higher barrier which would keep out cotton goods; and so it went down the line, until the tariff got to be such a complicated affair that only the experts knew what it contained. Business grew from a very humble position until it was not surpassed by industry anywhere in the world, and the United States developed a self-sufficiency and a general prosperity that were the envy of many less fortunate countries.

Other Early Government Services to Business In addition to tariff protection, business expected other services from the national government. Where the local police failed to afford protection to property, it was not unusual for large corporations to bring pressure to bear to have the federal troops sent in. Federal courts were appealed to by many business interests to protect them from labor troubles[4] and from regulation by state legislatures and administrative agencies. Public utilities found that the federal courts were a source of great comfort when they had exhausted every other remedy, for by asserting that they were being deprived of their property without due process of law they could often persuade the federal courts to reverse rulings and orders of state courts and public-service commissions. Again there was an expectation that the national government would seek to encourage markets for American products abroad through the consular service and commercial agents and that it would afford business every aid in transacting business abroad—even though this required the sending of the marines to the Central-American countries.

[4] The Norris-LaGuardia Act of 1932 reduced the power of the federal courts to intervene in disputes between labor and capital.

Early Attempts to Regulate Business Practices Yet, despite the favors which business asked from the national government, it was not disposed to welcome any regulation from it. Nevertheless, there was a certain amount of regimentation even around the turn of the century. As far back as 1890 Congress passed the Sherman Act which aimed at abolishing "unlawful restraints and monopolies" in the case of interstate commerce. The Knight case in 1895, as we have noted, saw that act whittled down by the exclusion of manufacturing, but even so it represented a certain amount of regulation. Had the federal authorities pushed its enforcement, it might have been far more effective, but it was not until Theodore Roosevelt became chief executive that vigorous steps were taken against the "trusts." The Clayton Antitrust Act (1914) sought to strengthen the earlier Sherman Act by specifically forbidding certain practices such as rebates, price-cutting for the purpose of driving out competitors, the acquiring of stock by corporations in competing firms, and interlocking directorates. It furthermore provided that officers of corporations should be personally liable for violations of the terms of the act and made it somewhat less difficult for prosecutions to be brought by those suffering from the practices prohibited. The latter statute created the Federal Trade Commission.

Role of the Department of Justice For many years the Department of Justice has maintained a division which is supposed to devote itself to the enforcement of the laws which regulate monopolistic practices. The agents of this division have invariably gone through the motions of fulfilling their duties, but energy has not always been in their work. Some of them have been drawn from the ranks of lawyers who see nothing wrong in big business, even when it engages in practices which are opposed to the public interest. Others have admitted the danger of uncontrolled monopolies, but they have been of the opinion that nothing could be done to check them because of the loopholes in the law, the influence of the corporations, and the conservative attitude of the courts. However, beginning with 1933 a substantial measure of public control over business practices was pushed by the Anti-trust Division.

THE DEPARTMENT OF COMMERCE

Most of the activities of the Department of Commerce relate to the conduct of private business, although the Civil Aeronautics

Board is primarily concerned with transportation and the Weather Bureau has an important bearing on both agriculture and aviation as well as on general business. In general, the regulatory functions which the national government carries on in the field of business are entrusted to independent commissions, while the Department of Commerce is more positive in its approach.

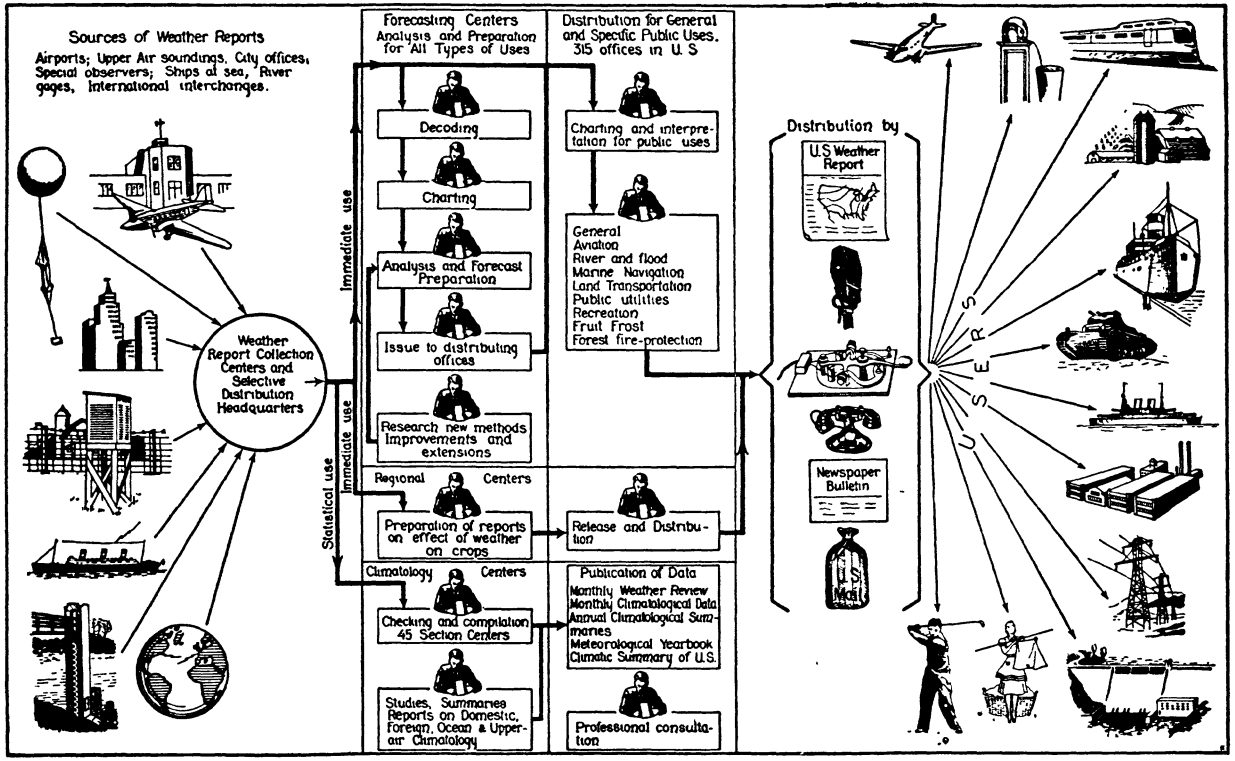
Organization The Department of Commerce is next to the youngest of the nine traditional administrative departments, but it has grown rapidly and at present is one of the more active federal agencies. This department is subdivided into numerous bureaus and services and employs large numbers of persons both in Washington and the field.

Domestic and Foreign Commerce The Bureau of Domestic and Foreign Commerce until 1946 had general responsibility for promoting both domestic and foreign trade. A reorganization of the Department of Commerce in 1946 provided an Office of International Trade and an Office of Domestic Commerce. The latter maintains some fifty offices scattered throughout the United States for collecting data concerning business conditions. This information is compiled in Washington and published regularly for the benefit of those who are interested. Corresponding information, though of a less detailed nature, is compiled by the Office of International Trade, and this is also published from time to time so that American business men and other interested persons can keep informed as to external economic levels.

Coast and Geodetic Survey and the Weather Bureau A Bureau of Coast and Geodetic Survey is constantly at work charting coasts, harbors, submerged reefs, and otherwise improving the charts which mariners use in piloting their ships. Considerable work has been carried on recently in revising old charts which were none too accurate and in studying the ocean floor or bed. The Weather Bureau carries on studies of weather and climate not only in the United States but in Arctic regions. Its reports and forecasts are of great importance to farmers, shippers, aviators, and others.

Census Bureau The Constitution provides that a census shall be taken every ten years.[5] For many years a new organization was set up every time a census had to be taken, but this proved

[5] See Art. I, sec. 2.



Department of Commerce.

HOW THE WEATHER BUREAU OPERATES

unsatisfactory and in 1902 a permanent Bureau of the Census was created by Congress.[6] That is not to say that the bureau maintains a staff of thousands of full-time employees, such as is required during the weeks when a census is being taken of the population, for that would entail great expense. However, a permanent headquarters is provided near Washington where various experts on population and statistical methods are constantly at work planning for a new census, supervising a census which is in the process of being taken, compiling the data assembled, and interpreting the information which deals with special problems. A series of volumes is published every decade setting forth the results of the census; in addition numerous special studies are made and reported from time to time. In the old days the census was primarily concerned with numbers of people, businesses, and livestock, but many additional items have been added during recent years. The 1940 census form was very carefully drafted and sought to secure adequate information in regard to home ownership, annual income, employment, and other points which are regarded as pertaining to the future program of the national government.

Bureau of Standards Attached to the Department of Commerce is a research bureau which assists almost every agency of the government at some time or other. The Bureau of Standards maintains a staff of chemists, physicists, geologists, and other highly trained technicians for the purpose of investigating problems which are referred to it by the various subdivisions of the national government.[7] Purchasing agents call upon it for reports as to the relative merits of various soaps, food products, chemicals, building materials, and the thousands of other items which the government has to purchase for its own use. Special problems may also be called to its attention.

The Patent Office Another subdivision of the Department of Commerce encourages inventiveness on the part of the American people. Congress has decreed that those who invent or discover "any new and useful art, machine, manufacture, or composition of

[6] For additional information on the history and organization of this bureau, see W. S. Holt, "The Bureau of the Census," *Service Monograph 53*, Brookings Institution, Washington, 1929.

[7] For additional information on this bureau, see G. A. Weber, "The Bureau of Standards," *Service Monograph 35*, Brookings Institution, Washington, 1925.

matter, or any new and useful improvement thereof" may be protected in their use during a period of seventeen years.[8] Application must be made to the Patent Office, full descriptions of the discovery must be furnished, and a fee of some $40 must be paid in each case. Since 1930 patents may be granted to those who develop new plants, other than those which are tuber-propagated. Trademarks and labels may also be registered with this office and confer protection for twenty years in interstate commerce.

THE FEDERAL TRADE COMMISSION

Composition and Organization Authorized by Congress in 1914, the Federal Trade Commission is one of the ranking independent establishments of the national government. It has five members who are appointed for seven-year terms by the President with the consent of the Senate—and Congress has provided by law that members shall not be removed during their terms except for misfeasance or malfeasance in office.[9] More than five hundred persons, including lawyers, statisticians, and clerks, are attached to its staff which is organized in eight divisions.[10]

Functions The Federal Trade Commission is primarily concerned with preventing unfair business practices on the part of those persons and corporations which engage in interstate commerce, excluding railroads, banks, and other businesses for which other provision is made. In this connection it conducts extensive investigations either upon its own initiative or upon the complaint of interested parties and if it finds that there is evidence of unfair practices summons the accused person or firm to a conference. Upon such occasions the whole commission sits in a quasi-judicial capacity, listening to the evidence which is presented to show the unfair practices and the defense which the accused makes to such charges. After due deliberation it issues a cease-and-desist order if it finds that the complaints are well founded. If the order is not

[8] The Patent Office has granted well over two million patents from the time it started numbering.

[9] See *Rathbun* v. *United States*, 295 U. S. 602 (1935), which upheld this law.

[10] On the organization of the F.T.C. see W. S. Holt, "The Federal Trade Commission," *Service Monograph* 7, Brookings Institution, Washington, 1922; and T. C. Blaisdell, *The Federal Trade Commission*, Columbia University Press, New York, 1932.

complied with, agents of the commission then proceed to invoke the aid of the courts in penalizing noncompliance.

In addition to investigating and hearing charges of unfair business practices, the Federal Trade Commission receives regular reports from corporations other than banks and common carriers which are engaged in interstate commerce. Upon occasion it may be asked by the President or Congress to undertake an investigation of large-scale violations of the anti-trust laws or notorious records of unfair business practices. Thus somewhat more than a decade ago it spent a great deal of time investigating the public utilities of the United States, especially those engaged in the generating and sale of electric power. Finally, the commission may undertake the study of foreign trade practices that affect business in the United States.

THE SECURITIES AND EXCHANGE COMMISSION

For many years unscrupulous persons and firms sold huge quantities of more or less worthless stocks, bonds, and other securities to a gullible public and the government did little or nothing to interfere. The losses on this account following 1928 were enormous —it is estimated that they amounted to something like $25,000,000,000.[11] The indignation aroused by the disclosures of a senatorial investigation coupled with the severe loss incurred by tens of thousands of people was enough to cause the passage of a series of laws beginning in 1933, and resulted in the creation of the Securities and Exchange Commission in 1934.

Composition and Organization The Securities and Exchange Commission is made up of five members, who are appointed by the President with the consent of the Senate. Sizable offices are maintained in Washington and in other large cities. Subdivisions of the commission deal with registration of securities, stock exchanges, investment houses, and foreign issues.

Functions The S.E.C. has been given several important duties which relate to the interstate sale of securities of other than railroads, banks, insurance companies, and the federal, state, and local governments in the United States. Sales under $100,000 are not covered by the law which requires the registration with the

[11] See *Senate Report 17*, Seventy-third Congress, first session, p. 2.

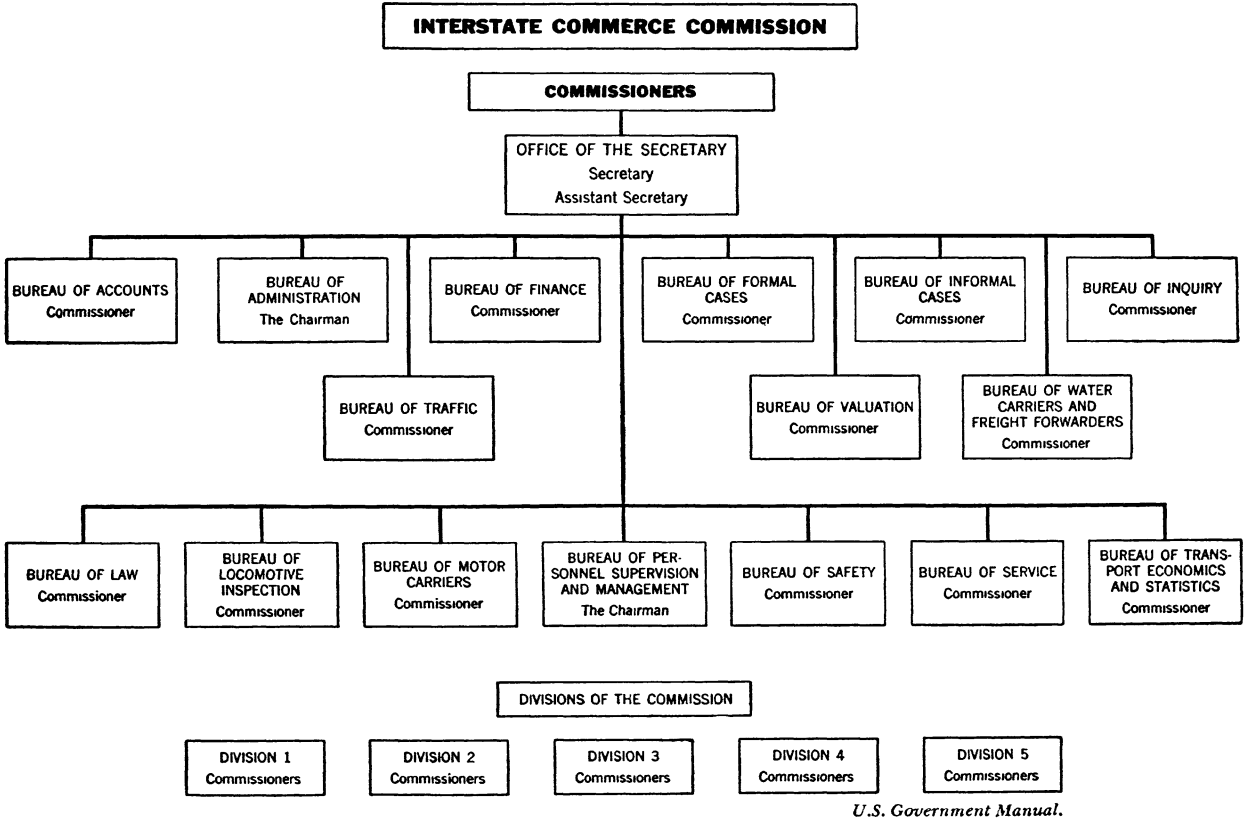
S.E.C. of securities circulating in interstate commerce. In registering securities the directors and financial officers are required to furnish a prospectus which describes the property upon which the securities are based. If these statements are false or only partially accurate, investors who suffer loss through the purchase of such securities may recover from the corporation, its directors, and its principal financial officers. Another act gives the commission authority to "correct unfair practices on security markets." [12] "Washed sales," "matched orders," "rigging," and "pools" for manipulative purposes are all banned by the S.E.C. In order to discourage speculation on a "shoestring" the Federal Reserve Board is instructed to assist the S.E.C. by fixing the cash margin required for loans having securities as collateral. In 1935 Congress extended the authority of the commission by giving it jurisdiction over gas and electric holding companies which engage in interstate commerce or use the United States mails. The act provided that after January 1, 1938, holding companies coming under the scope of the S.E.C. should limit their operations to a single integrated system rather than spread all over the country, as several of the giant electric holding companies had done.[13]

TRANSPORTATION, TRANSMISSION, AND COMMUNICATIONS

In some countries the transportation, transmission, and communication facilities are both owned and operated by the central government. In others at least a considerable proportion is publicly owned and operated. Even in those countries in which the institution of private property as well as democratic political institutions are well preserved, it is commonplace to find that the telegraph and telephone systems and perhaps part of the railroads are government owned and operated. However, in the United States these facilities are very largely under private ownership and management. Instead of owning its railroads, radio systems, or telegraph and telephone lines, the United States has preferred to maintain private management with government regulation. At one time in our history even the regulation of these utilities was omitted,

[12] For additional discussion of this provision, see C. C. Rohlfing *et al.*, *Business and Government*, rev. ed., Foundation Press, Chicago, 1941, Chap. 12.

[13] The first real test of the "death sentence" holding company legislation involved the $1,000,000,000 North American Company.



U.S. Government Manual.

but their monopolistic character, the dependence of the public on their services, and the vicious practices in which some of them indulged made it necessary to impose a certain measure of government regulation.

Interstate Commerce Commission The Interstate Commerce Commission was set up by the Act to Regulate Commerce passed by Congress in 1887. Through the years many other laws dealing with this commission have been added to the statute books, until it is somewhat difficult to obtain a broad view of their net effect. The I.C.C. at present is directed by eleven members, appointed by the President with the consent of the Senate for seven-year terms. The commission maintains a staff of approximately 2,600 persons and is organized into sixteen main bureaus. Besides the commissioners, who may either sit as a body for the most important hearings or in groups of three or so to consider less consequential matters, the I.C.C. employs large numbers of experts in such fields as engineering, rate-making, financial organization, statistics, transportation law, and bankruptcy. Most of its work is done in Washington, but it is not unusual for the commissioners themselves and especially for the staff members to go about from city to city.

General Functions of the I.C.C. Although at one time the Interstate Commerce Commission had general oversight over all interstate commerce which Congress saw fit to regulate, the increasing complexity of public problems has led to the establishment of other agencies to relieve it of supervision over telegraph and telephone lines and cables. At the present time, therefore, the I.C.C. devotes its energy mainly to the regulation of public transportation facilities, or "common carriers" as they are called.[14] It must be noted at the outset that the commission does not take jurisdiction over all transportation, but only that part which is of interstate character; this, of course, actually includes a large part of the common carriers of the United States. The I.C.C. is peculiarly associated in the minds of many people with the railroads and as a matter of fact has spent more time in regulating their activities than on any other function. In addition, it has important duties in connection with interstate bus and truck lines, sleeping-car companies,

[14] A great array of information dealing with the work of the I.C.C. is included in I. L. Sharfman, *The Interstate Commerce Commission,* 4 parts, Commonwealth Fund, New York, 1931-1937.

express companies, steamship lines which are owned by railroad systems, bridges, ferries, lighters, terminals, and pipe lines, except those carrying gas and water. Handling its duties requires that it act in at least two important capacities. In the first place, the eleven commissioners constitute a sort of judicial body, commonly designated a quasi-judicial agency, and in this capacity render decisions after hearing the arguments and evidence which are presented to it by railroad companies and its own examiners and attorneys. The decisions are regarded as on a par with those of the federal district courts and appeals may be taken on points of law to the circuit courts of appeals. In addition to quasi-judicial functions the individual members have responsibility for the administrative work of the subdivisions into which the I.C.C. is organized.

The rates, both passenger and freight, and the general service which interstate carriers render must be approved by the I.C.C. The frequency of service, the safety of the equipment, the signaling system for regulating train movement, and related items are subject to the commission. Before discontinuing service on a given line or dropping a train from the schedule, the railroad must receive the consent of the I.C.C. All common carriers are required by law to make regular reports to the Interstate Commerce Commission on an array of matters. Especially important are the reports which deal with the finances and corporate practices which relate to financing. Before they mortgage additional property, float new stock, engage in refunding operations, or do anything that has an important bearing on their financial positions, the railroads must obtain the express permission of the commission.

United States Maritime Commission Although the United States leads the world in railroad mileage and possibly in railroad standards and ranks high in commercial aviation, for some time prior to World War II it held an unenviable position in water transportation, especially in so far as a merchant marine plying between our shores and foreign ports is involved. During certain periods of our history we have been widely known because of our merchant marine, but after World War I the situation became increasingly embarrassing, until our vessels were the source of amusement in many quarters. To begin with, we had a very small fleet, especially in the passenger class. Perhaps more important than even that was the fact that the vessels, both passenger and

freight, were antiquated and slow. In 1936 Congress finally passed a Merchant Marine Act to remedy the situation in some measure. A United States Maritime Commission, consisting of five members, appointed by the President with the consent of the Senate for terms of six years, was created to administer the terms of the act.

Merchant Marine Plans A giant merchant marine cannot be built up overnight or even in the space of a year or so. The Maritime Commission started out by making an extensive study of the problem [15] and then proceeded to formulate a series of proposals for submission to Congress looking toward the construction of approximately fifty merchant vessels per year. The national defense program made the problem of shipping especially important and led the Maritime Commission to supplement its regular program with a gigantic emergency schedule calling for hundreds of freighters. The end of the war left the United States with more than half of all of the world tonnage.[16] It may be added that the national emergency interrupted the long-range plans for building a merchant marine. Vessels under way or on the point of being delivered to the companies designated to operate them were diverted in large numbers to the war services. The newly completed passenger flagship "America," the largest vessel to be constructed in American yards for merchant use, and many other vessels were taken over as Army and Navy transports.

Merchant Marine Difficulties The task entrusted to the United States Maritime Commission is a difficult one. The cost of construction in the United States is out of all proportion to that in foreign countries. After the boats have finally been constructed, it is not easy to find companies with enough resources and experience to operate them efficiently. Finally, there is the labor problem which in many respects is the most serious of all.

The Coast Guard Though placed under the Navy during World War II, the Coast Guard is regularly a subdivision of the Treasury Department because of its responsibilities in regard to the enforcement of customs' regulations and the prevention of smuggling. However, many of its functions are more closely related to

[15] This report was published as *Economic Survey of the American Merchant Marine,* Government Printing Office, Washington, 1937.

[16] Many of these wartime vessels are, of course, not well adapted to peacetime needs. A major problem is what to do with many of the ships.

transportation than to fiscal matters. It not only acts as a maritime police force but operates lighthouses and provides buoys and various aids to navigation along the extended seacoast and in the Great Lakes. It has recently taken over the inspection functions of the Department of Commerce and regularly inspects both domestic and foreign-flag vessels to ascertain whether they and their equipment are in keeping with minimum safety standards. In cases of marine accidents the Coast Guard holds investigations and attempts to discover the causes and if necessary levies a penalty. It licenses officers, pilots, and seamen, and maintains an ice patrol in the North Atlantic to protect shipping from icebergs.

The C.A.B. and the C.A.A. The fourth reorganization plan, effected by the President on April 11, 1940, combined the Civil Aeronautics Authority and the Air Safety Board into a Civil Aeronautics Board to be attached to, although not entirely dependent upon, the Department of Commerce. This agency does not as yet have the extensive authority over commercial aviation that the Interstate Commerce Commission has over land transportation, but its functions are, nevertheless, quite important. To begin with, it has the power to issue permits for the operation of interstate and foreign air services. A new company wishes to establish a plane service between two cities in the United States—it must first of all obtain the authorization of the Civil Aeronautics Board, which grants such permission only if it can be shown that existing services are not adequate and that an actual need for new service exists. Well-established companies may wish to shift their lines or open new routes. As a matter of fact most of the leading companies filed plans calling for services linking the United States directly with virtually every capital city throughout the world even before World War II was ended. The Civil Aeronautics Administration encourages commercial air lines by arranging for emergency landing fields, lighting and otherwise marking routes, and by furnishing a directional radio service. C.A.B. licenses planes and pilots and seeks to build up a reserve of pilots by offering courses to college students. In cases of accidents it conducts investigations and attempts to discover the cause, at the same time taking action which may prevent similar catastrophes in the future.[17]

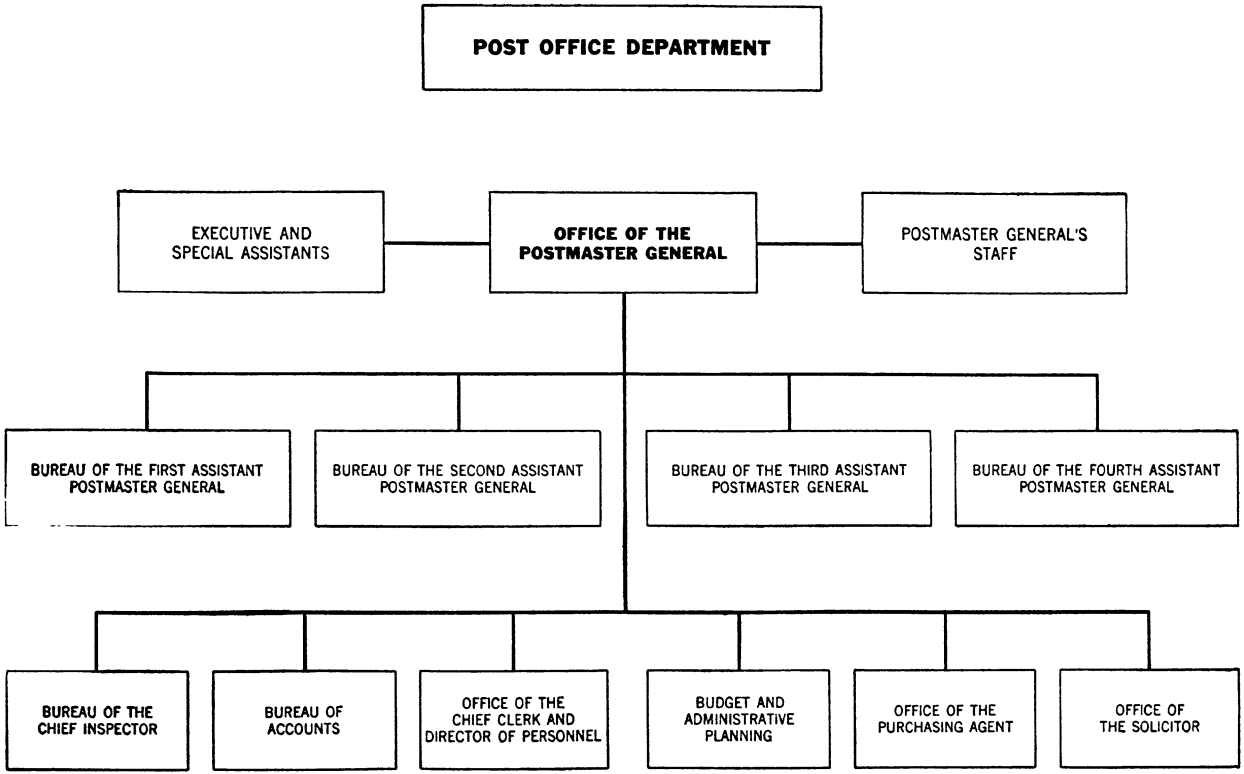
[17] Studies which despite their dates may still be profitably consulted are: C. C. Rohlfing, *National Regulation of Aviation*, University of Pennsylvania

Federal Communications Commission In 1934 it seemed advisable to the President and Congress to bring all interstate and foreign communication facilities together under a single agency and hence the Federal Communications Commission was created. This body has seven members, appointed for seven-year terms by the President with the consent of the Senate. It enjoys far-reaching authority over the entire field of interstate and foreign communications, having jurisdiction over telephones, telegraph systems, and cables, but it is especially active in the regulation of radio broadcasting.[18] It must approve interstate telephone and telegraph rates, fix standards of service, consider proposals to merge companies, and oversee financial practices. Licenses for operating broadcasting stations, including FM and television, are issued by the F.C.C., which assigns the wave length to be used, the hours that the license covers, and the strength of the broadcasting equipment. Since these licenses must be renewed periodically, the commission has a considerable measure of control over the policies of local stations, for unless the conditions which it lays down are met it may refuse to renew. One of the conditions stipulates the maximum time which may be allotted to advertising; another requires that at least 15 per cent of the time must be devoted to educational programs; while a third bans scurrilous, indecent, frightening, and other such programs not held to be in the public interest.

Federal Power Commission The United States is fortunate in possessing water-power resources, more than 75 per cent of which are located on public lands. The inclination of the private utilities to consider this valuable property their own and the increasing transmission of electricity over high-tension lines across state lines resulted in the establishment of a Federal Power Commission in 1930. This independent agency is directed by five members, appointed for five-year terms by the President with the consent of the Senate, and maintains a staff of engineers, lawyers, and other experts in Washington and the field. The F.P.C. has been authorized by law to pass on applications of private utilities which wish to develop the water power included in the public domain or the

Press, Philadelphia, 1931; and Kenneth Colegrove, *International Control of Aviation,* World Peace Foundation, Boston, 1939.

[18] On the somewhat stormy history of its predecessor, the Federal Radio Commission, see L. F. Schmeckebier, "The Federal Radio Commission," *Service Monograph 65,* Brookings Institution, Washington, 1932.



U.S. Government Manual.

navigable waters of the United States. Though private interests have disputed its final jurisdiction in such matters, the Supreme Court in the recent New River case has ruled that the powers of the commission are determining. The Public Utility Act of 1935 expanded the scope of the F.P.C. by empowering it to regulate the rates, services, corporate practices, and financial dealings of private utilities which transmit electricity across state lines; recently interstate pipe lines have been added.

The Post Office During its entire existence the government has assumed responsibility for carrying the mails, though it was not until 1874 that the Post Office Department was created. The Post Office Department has at its head a Postmaster General rather than a secretary, but except in title there is not a great deal of difference between this official and the head of one of the other major departments. Four assistant secretaries divide up the various tasks assigned to the department and report directly to the Postmaster General. There are general divisions which deal with law, auditing, and personnel and a large number of more specialized subdivisions that have to do with railway mail, postal savings, money orders, and parcel post. Though the department occupies a large building in Washington, most of its activities are, of course, carried on throughout the length and breadth of the United States, for there is scarcely a spot, however remote, that is not touched by the Post Office Department. Regional offices are maintained in large cities and more than forty-five thousand local post offices serve as operating units. The latter are classified as first-, second-, third-, and fourth-class,[19] depending in large measure upon their annual receipts.

Scope of the Postal Activities The Post Office Department has sometimes been pointed to as the largest government agency in the world. Varying conditions make it somewhat difficult to compare departments of different countries, but by any standard the American post office is large. It not only carries letters and other first-class matter, but huge quantities of newspapers, magazines, and books. Since 1913 it has transported enormous numbers of parcel-post packages which contain almost every conceivable commodity. It operates its own insurance system for the protection of those who desire protection of their packages against loss or

[19] Approximately 70 per cent of the post offices are fourth class.

destruction. A registration arrangement provides unusual care in the handling of valuable letters or packages, while a special-delivery service speeds up delivery after mail has reached its destination. An inexpensive airmail stamp provides especially speedy movement for first-class mail. Rural delivery routes exceed thirty thousand in number and bring mail to the door of something like twenty-five million people who live in rural areas. Several million persons depend upon the post offices for holding and investing their savings. Large numbers of patrons send money from one place to another through the medium of money orders.

MISCELLANEOUS

Weights and Measures The Constitution authorizes Congress to "fix the standard of weights and measures," but Congress has not exercised this power beyond providing that either the English pound-foot system or the metric scale may be legally employed. The Bureau of Standards keep a "perfect yardstick" which is made of platinum and valued at many thousands of dollars. The food and drug acts prescribe that packages shall indicate their contents both as to quality and measure. However, in general it is the state and local governments that inspect the scales, pumps, and measures of business concerns to see that unfair practices are not engaged in.

Copyrights The Library of Congress is charged with receiving applications from those who have written books or articles, composed music, drawn cartoons, produced motion pictures, taken photographs, or prepared maps or charts. A copyright gives an author the exclusive right to reproduce and publish his work for a period of twenty-eight years, with a possible renewal for an additional period of the same length. Inasmuch as newspapers, magazines, books, plays, motion pictures, comic strips, columns, and music are now almost always copyrighted, it is not permissible to broadcast, produce, show, translate, or otherwise use except for private purpose these things unless a license has been obtained.

Government-owned Corporations During recent years government-owned corporations have become increasingly numerous: in 1931 there were only ten of them; by 1938 the number had gone up to twenty-seven; while in 1944 there were forty-four. By no means all of these engage in enterprises that can be com-

pared with private business endeavors, though the Joint Committee on the Reduction of Nonessential Federal Expenditures set up by Congress reports that they frequently offer "invincible competition" to private business. According to this committee these government-owned corporations in 1944 had a borrowing power of $33,000,000,000, loans of $6,500,000,000, liabilities of $16,500,000,000, and a current loss of nearly $103,000,000. They employed seventy thousand persons. "There is no effective over-all control; alone or in certain groups, these corporations are autonomous," according to the congressional committee. In general, they are not subject to the Bureau of the Budget, the Treasury, and the General Accounting Office in anything like the degree laid down for regular government agencies. The committee concluded that "the corporate form is entirely too free a resort" and that "corporations were formed in many cases in which an ordinary agency would have sufficed." [20] Many of these will doubtless be liquidated with the postwar reorganization, but others are probably permanent in status and present a significant development in government organization.

Selected Bibliography

Arnold, Thurman, *Anti-Trust Law Enforcement*, American Council on Public Affairs, Washington, 1940.

Baum, R. D., *The Federal Power Commission and State Utility Regulation*, American Council on Public Affairs, Washington, 1942.

Blaisdell, T. C., Jr., *The Federal Trade Commission*, Columbia University Press, New York, 1932.

Bonbright, James C., *Public Utilities and the National Power Policies*, Columbia University Press, New York, 1940.

Crecraft, E. W., *Government and Business*, World Book Company, Yonkers, 1928.

Crumbaker, Calvin, *Transportation and Politics*, University of Oregon Press, Eugene, 1940.

Diener, J. A., *The United States Patent System*, American Society for Metals, Cleveland, 1940.

Dykstra, G. O., and L. G. Dykstra, *A Textbook on Government and Business*, Callaghan & Company, Chicago, 1939.

[20] The report of the committee was made public on August 1, 1944.

Elsbree, H. L., *Interstate Transmission of Electricity*, Harvard University Press, Cambridge, 1931.

Fainsod, Merle, and L. Gordon, *Government and the American Economy*, W. W. Norton & Company, New York, 1941.

Gavit, B. C., *The Commerce Clause of the United States Constitution*, Principia Press, Bloomington, 1932.

Hadlick, P. E., *Criminal Prosecutions Under the Sherman Anti-Trust Act*, Ransdell, Inc., Washington, 1939.

Hall, Ford P., *Government and Business*, rev. ed., McGraw-Hill Book Company, New York, 1939.

Harris, S. E., and others, *Economic Reconstruction*, McGraw-Hill Book Company, New York, 1945.

Henderson, G. C., *The Federal Trade Commission*, Yale University Press, New Haven, 1924.

Johnson, E. R., *Government Regulation of Transportation*, D. Appleton-Century Company, New York, 1938.

Keezer, D. M., and Stacy May, *The Public Control of Business*, Harper & Brothers, New York, 1930.

Koontz, Harold D., *Government Control of Business*, Houghton Mifflin Company, Boston, 1941.

Lange, Oscar, and others, *The American Way of Business; The Role of Government in a System of Free Enterprise*, National Council for Social Studies, Washington, 1944.

Lippincott, B. E., and others, *Government Control of the Economic Order*, University of Minnesota, Minneapolis, 1935.

Lyon, L. S., and others, *Government and Economic Life*, 2 vols., Brookings Institution, Washington, 1940.

Miller, John Perry, *Unfair Competition*, Harvard University Press, Cambridge, 1941.

Reynolds, G. G., *The Distribution of Power to Regulate Interstate Carriers*, Columbia University Press, New York, 1928.

Ribble, F. D. G., *State and National Power over Commerce*, Columbia University Press, New York, 1937.

Rohlfing, C. C., *National Regulation of Aeronautics*, University of Pennsylvania Press, Philadelphia, 1931.

—, and others, *Business and Government*, rev. ed., Foundation Press, Chicago, 1941.

Sharfman, I. L., *The Interstate Commerce Commission*, 4 parts, Commonwealth Fund, New York, 1931-1937.

Swenson, R. J., *The National Government and Business,* D. Appleton-Century Company, New York, 1924.

Watkins, M. W., and others, *Public Regulation of Competitive Practices in Business Enterprises,* rev. ed., National Industrial Conference Board, New York, 1940.

25 · *Agriculture, Planning, and Conservation*

Considering the pre-eminent position of the United States among the agricultural producers of the world,[1] it is not surprising that the national government has given much attention to this aspect of national life. It is interesting to note the general attitude of the farmer toward government. Less dependent in general than his city cousin, he has, nevertheless, long looked to the government for assistance of one kind and another. Planning and conservation have come in for much less emphasis, but there is a growing realization of their importance.

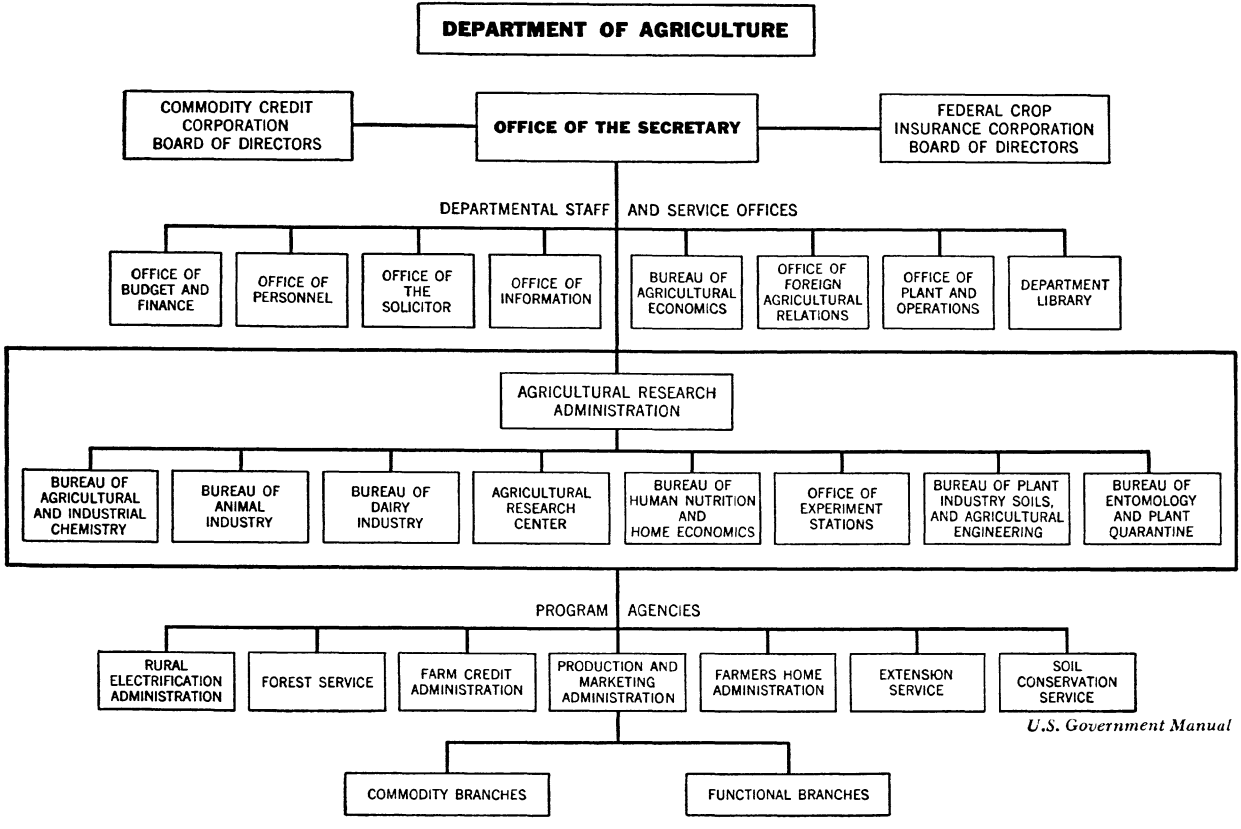
DEPARTMENT OF AGRICULTURE

General Organization and Purpose The Department of Agriculture is one of the most elaborate of federal administrative agencies in organization. Its general form follows that of the major old-line departments, but it is divided into numerous bureaus and services which deal with the many problems arising out of American agriculture. Professors Gaus and Wolcott declare that "production has been the traditional major interest of the department." [2] Production includes soils, plants, animals, protection from hazards, equipment, and production goals.

Soil Many of the divisions of the Department of Agriculture, mainly in the Agricultural Research Administration and the

[1] During prewar years the United States did not export the large quantities of grain and meat which long made it one of the principal storehouses of the world. The attempts of other countries to become self-sufficient and the increasing demand in the United States have taken away much of the world market. Nevertheless, a large part of the cotton must still find a foreign market or go unused and even wheat, corn, and meat are ordinarily produced in such quantities that they could be exported in large amounts.

[2] See their *Public Administration and the United States Department of Agriculture*, Public Administration Service, Chicago, 1940, p. 94.



U.S. Government Manual

Soil Conservation Service, are concerned with soil. The early work of this character was carried on to a large extent in connection with state experimental stations and extension officials, but during the last few years a major shift in emphasis has taken place as a result of the rapid development of the Soil Conservation Service, which has its own regional and state projects. Erosion control, flood control, irrigation, submarginal land purchase and development, soil chemistry and physics, soil fertility, soil microbiology, hill culture, sedimentation, and drainage are some of the problems which receive the attention of the Department of Agriculture. Soil has been designated the most valuable natural resource which the United States possesses. Perhaps the very richness of the soil resources has blinded even the farmer who is in intimate contact with land to the grave dangers of erosion and depletion. A survey made by the Soil Conservation Service in 1936 discovered that 735,000,000 acres of land—an area about seven times as large as the entire state of California—which had once been valuable for farming, grazing, or forests had been seriously damaged or entirely ruined by erosion either of the water or wind variety. When to this is added the land which has been allowed to run down because farmers have taken out as much as they could over a period of years without attempting to conserve the fertility, the situation is far more alarming than most people realize. The Soil Conservation Service has persuaded a fairly large number of farmers to organize soil conservation districts, despite the reluctance of many rural inhabitants to participate. An important program of control has been started, but it will require many years before the situation can be regarded as checked.

Erosion Control Where land is being ruined by water, it is possible to carry on several types of control. Hilly land which is planted with corn is especially subject to erosion; therefore substituting a crop which binds the soil together during the fall and winter months can contribute greatly to slowing down the rate, which if left unattended sometimes washes away hundreds of tons of top soil from comparatively small areas. New methods of plowing have been devised to check both water and wind erosion. Rock or concrete barriers may be constructed to assist in preventing severe cases of erosion from water. Agents of the Department of Agriculture have literally combed the earth to find plants that

resist drought, bringing back from China, Australia, South Africa, and other dry lands thousands of specimens for experimental purposes. The tree belt in the Great Plains region is aimed at breaking winds and thus slowing the process of wind erosion, which during single years has blown away millions of tons of topsoil, leaving dust bowls behind.

Plants The Department of Agriculture carries on elaborate programs which have a vital bearing on the agricultural prosperity of the United States. In co-operation with the land-grant colleges and state experimental stations, an effort is constantly being made to improve the varieties of grains, vegetables, and fruits grown in the United States, with the result that apricots able to thrive in the bleak lands along the Canadian border and earlier ripening corn and wheat have been developed. Diseases that attack wheat, corn, cotton, tobacco, fruit trees, and other plants have been carefully studied and in many cases effective treatment for their handling has been devised.

Animals The Department of Agriculture has two large bureaus primarily interested in livestock: the Bureau of Animal Industry and the Bureau of Dairy Industry. The former concerns itself with the improvement of beef cattle, dairy cattle, swine, sheep, goats, horses and mules, and poultry. Inferior livestock breeds which eat their heads off yet return very little meat, milk, eggs, or fibers have been displaced to a considerable extent by superior breeds developed by the Bureau of Animal Industry and other interested agencies. Much attention has been given to animal nutrition, tuberculosis eradication, the use of serums, tick eradication, and foot-and-mouth disease.[3] The Bureau of Dairy Industry has been active in developing milk-producing as opposed to beef-producing cattle and in addition has investigated the problem of feeding for milk production, dairy management, milk pasteurization and handling, and milk marketing.[4]

Protection from Hazards The Bureau of Entomology and Plant Quarantine concentrates on pests and parasites which cause serious damage to various crops. It conducts surveys to ascertain

[3] Publications of this bureau include: *Essentials of Animal Breeding, Livestock for Small Farms, Feeding Cattle for Beef, Swine Production,* and so forth.

[4] See its reports on *Dairy Herd Improvement, Dairy Cattle Judging,* and so forth.

the extent of damage inflicted by various insects and studies insects that attack cereals, cotton, trees both of the forest and the orchard variety, and truck and garden crops. Fruitflies, gypsy and brown-tail moths, Japanese beetles, Mexican fruitflies, pink bollworms, Thurberia weevils, and the screwworms are of such importance that they have divisions of their own in the bureau. Other divisions administer domestic plant quarantines, either hiring directly or granting funds to the states to employ persons to stop all cars and trucks at certain points and examine them for plants which may be carriers of pests into hitherto unaffected areas. Foreign parasite control and foreign plant quarantines are also handled by this bureau.

Equipment The Department of Agriculture also interests itself in the buildings and equipment of farms. The Agricultural Research Administration maintains divisions which deal with mechanical equipment, structures, plans and service, cotton ginning, and fertilizer. Bulletins are published reporting their investigations about corncribs, ventilation of dairy barns, bulk storage of small grains, use of concrete on the farm, rat proofing, wind-resistant construction of farm buildings, roof coverings for farm buildings, greenhouse heating, preventing gin damage to cotton, and so forth.

Production Control Much better known to the general public than the activities so far examined are the various attempts to control crop production so that prices would be reasonably high and tremendous surpluses avoided. Various laws looking toward this end were passed prior to 1933, but the Agricultural Adjustment Act far exceeded these in scope and stirred up widespread interest on the part of the rank and file of the people.

After the Act of 1933 had been declared unconstitutional, the national government very shortly took steps to tie a production program up with the Soil Erosion Act of 1935 which was generally regarded as a valid exercise of federal authority. In 1936, Congress passed a Soil Conservation and Domestic Allotment Act which aimed at bringing farm prices to the level of the most prosperous period of agriculture, 1909-1914, and into parity with prices of manufactured goods. No longer were crops actually planted to be plowed under or pigs slaughtered by the thousand; rather agricultural production was to be planned in such a manner that "an ever-normal granary" might be available, with prices at levels that would be encouraging to the farmer but not too bur-

densome to the consumer. To avoid national shortages induced by crop failures it was decided not to cut the margin so closely as had been done under A.A.A. A Production and Marketing Administration in the Department of Agriculture has charge of this program, while a Federal Crop Insurance Corporation offers protection to individual farmers.

Agricultural Subsidies Instead of paying farmers to keep production down, the emphasis during the years following 1942 was placed on meeting certain very high goals. Marketing quotas, acreage quotas, and similar limiting devices were largely if not entirely abandoned. Subsidies running into the hundreds of millions of dollars were paid from the federal Treasury to those farmers who successfully met the goals set by the War Food Administration.

Commodity Credit Corporation Though created as early as 1933, the Commodity Credit Corporation was consolidated with the War Food Administration in 1943 and has become most active during the war years. With a borrowing power of 4.75 billion dollars, this agency played a most important part in financing the purchase of food for lend-lease, helped to finance the domestic production of commodities formerly imported, and carried out a sizable program aimed at stabilizing farm prices. Loans approximating 90 per cent of parity prices set at the beginning of the marketing year have been made to producers of cotton, corn, wheat, rice, tobacco, peanuts, hogs, dairy products, soybeans, and certain other items.

Consumer Protection Since 1906 federal inspection of meat intended for shipment in interstate commerce has been mandatory, although until 1938 a provision permitting "animals slaughtered by any farmer on the farm" to be exempted was used by small wholesale packers as a loophole. Considerable agitation for food and drug inspection led to the passage in 1906 of a fairly extensive law conferring the duty of inspection on the Department of Agriculture as far as interstate shipments of certain goods were involved. In 1930 the McNary-Mapes Amendment made it possible to set up standards for canned goods which had been labeled in so many ways that it was difficult to tell what grade was being purchased. The Federal Food, Drug, and Cosmetic Act of 1938 gave authority

to determine standards of quality in all foods except dried or fresh fruits, vegetables, and butter.[5]

R.E.A. In 1939 the Rural Electrification Administration was transferred to the Department of Agriculture and the extension of electrical facilities among farm homes was given new impetus. The war blocked this progress for several years, but 1945 saw renewal of construction.

Extension Service A very extensive attempt is being made to "develop desirable standards for home and community living" in rural areas. County demonstration agents are maintained in large numbers of counties throughout the United States—approximately twenty-five hundred of these agents are employed by the state extension services with the assistance of the federal department. They have recruited something like two hundred thousand volunteer leaders to assist them and reach at present perhaps one fifth of all farm homes. Clubs have been organized among the farm women to further the movement. Numerous 4-H Clubs enroll the farm boys and girls for civic and vocational education and recreation.[6]

Agricultural Credit As far back as 1916 the demand for improved agricultural credit became so insistent that Congress authorized the establishment of banks under a Farm Loan Board. In 1932 R.F.C. supplemented these banks with twelve regional agricultural credit corporations to make loans directly to farmers and livestock producers. Shortly after Franklin D. Roosevelt assumed office, he decided that it was not desirable to have agricultural credit facilities spread over several agencies of government and issued an executive order "to bring under one organization all federal agencies and instrumentalities concerned with agricultural credit." This agency was designated the Farm Credit Administration. The Farm Credit Acts of 1933 and 1937 extended the scope of the F.C.A., especially in the co-operative field, but left it as an independent establishment. The reorganization of 1939 deprived

[5] By Reorganization Plan 4 (April 11, 1940) the Pure Food and Drug Administration was transferred to the Federal Security Agency.

[6] For additional discussion of these clubs, see Department of Agriculture, *Boys' and Girls' 4-H Club Work*, Misc. Circ. No. 77, and *Organization of 4-H Club Work*, Misc. Circ. No. 320, Government Printing Office, Washington.

the Farm Credit Administration of its independent status and placed it under the Department of Agriculture, though not "an integral part" of that department.[7] The United States is divided into twelve districts for purposes of administering the various provisions relating to agricultural credit. In each of these districts there are the following banks: a Federal Land Bank, a Federal Intermediate Credit Bank, a bank for co-operatives, and a production credit corporation. A Farmers Home Administration was created in 1946 to furnish credit for home construction and emergency loans for seed, fertilizer, and equipment.

Results of the Credit Program It would be difficult to maintain that the national government has not been generous in furnishing credit to the farmers of the country. A good many billion dollars have been advanced in the form of credits of one kind and another, the bulk of which will, of course, be repaid eventually. Large numbers of farms have been saved to their owners through such agencies of the national government as the Federal Farm Mortgage Corporation, which was set up in 1934. Some of the activities have been less justifiable than others. Few would question the wisdom of furnishing long-term credit for the purchase of land, despite the fact that deflated farm values have at times caused the mortgages in certain cases to be greater than the market price of the farm. Short-term loans for meeting expenses between the period of harvest and sale are also quite legitimate. The crop-production loans, however, are viewed by some competent persons as of doubtful validity. Pressure is brought on the Department of Agriculture to fix the loan value of cotton, corn, wheat, and other commodities considerably above the market price so that generous loans may be obtained. Then if the market does not advance to a point at which the crops can be disposed of for more than the loans, the government is left holding the bag.

Mortgage Legislation Indirectly related to farm credit has been the legislation enacted by Congress providing for moratoria on the foreclosure of farm mortgages. The first of these attempts was declared unconstitutional by the Supreme Court,[8] but a revamped bill, which extended many of the same advantages to

[7] This was done under Reorganization Plan 1 and took effect July 1, 1939.
[8] *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555 (1935).

farmers, was upheld.[9] This legislation was not only important in giving farmers time in which to raise money to meet mortgage payments; it conferred a powerful weapon which they could use in persuading their creditors to scale down the payments and even the principal. Rather than go through the complicated process which the law required, many holders of mortgages preferred to make generous settlements with their debtors. In this way thousands of farmers were able to reduce their mortgages to a point where it was possible to carry them.

NATIONAL PLANNING

American Attitude toward Planning During the earlier part of our national history we were so generously endowed with natural resources that it seemed quite unnecessary to look to the future. True we had periodic panics which caused great upheaval along our otherwise fairly even path, but these did not last too long and were considered acts of God to be borne as cheerfully as possible. As our population has doubled and redoubled, spreading from coast to coast, the generous margin of wealth which we have more or less taken for granted has diminished appreciably. Nevertheless, despite the all too numerous indications of grave future troubles, we have been most reluctant to plan any steps that might keep the situation within control, even if a complete preventive is out of the question. Why have we behaved so immaturely as a nation? Some would say that we are a young country and that a display of reckless irresponsibility is natural. But a century and a half is a considerable span of life for a single national government. Moreover, though the New World was primitive, we did not start out as barbarians. To some extent it is probable that the very richness of our endowment has encouraged an attitude of profligacy. What does it matter if millions of acres of land are laid waste by erosion, injudicious farming, ruthless lumbering, strip mining, and other evil practices when there are still millions of additional acres as yet untouched? With the habit of carelessness ingrained, it is

[9] *Wright* v. *Vinton Branch Mountain Trust Bank*, 300 U. S. 440 (1937). The distinction the court found between the two laws was that the first had the effect of taking creditors' substantive rights without due process of law while the second more carefully safeguarded them in accordance with the suggestions of the earlier decision.

not easy to transfer to a more responsible attitude, even when the surplus is rapidly vanishing.

American Planning Phobia Supplementing these explanations is the phobia associated with government planning. Unfortunately public planning is identified in the minds of large numbers of people with the dictatorships, bolshevism, and the appropriation of private property. Doubtless the publicity which has been given to the Five-year Plans of the Soviet Union has accomplished this end. At any rate the mere mention of government planning is enough to send cold shivers down the spines of many American citizens. Actually there seems no valid reason for associating public planning with any particular form of government. All governments, both democratic and totalitarian, levy taxes, and no one imagines that the taxing power is the embodiment of any one concept of the state. Similarly planning, as a function of government, should be viewed as inherent in the very institution rather than as being a distinguishing characteristic of any one type.

Role of Planning in a Democracy While it would be an error to minimize the importance of public planning in the totalitarian governments, it is still probable that in a democratic government it is a function even more essential to efficient operation. Under the totalitarian setup one man or a few men hold the destinies of the nation more or less in their own hands; consequently by the very nature of the case there is apt to be a more or less integrated program. In the democratic governments, especially in the representative form which we have, there is not the unifying force so obvious in totalitarianism the world over. The President contributes to this end, but even when a vigorous and ingenious man occupies the office it is difficult for him to control effectively. When Congress follows one course, when the President holds somewhat different ideas, and when the administrative agencies operate with considerable leeway, there is bound to be confusion and conflict, unless some attempt is made to set up a plan toward which all of the efforts will be directed.

Difficulties of Planning in a Democracy Needless to say, it is far more difficult to put a far-reaching plan in operation in a democracy than in a dictatorship. Despite widespread disagreements and lack of enthusiasm for the contents of a plan, it is only necessary to have the dictator proclaim the plan as effective under a

totalitarian form of government. It may be that internal conflict will prevent its smooth operation and that the results will be far less than the goal set forth, but the plan will be at least nominally observed. In a democratic government it is essential to obtain the consent of many jealous agencies and branches even before the plan can be accepted at all. The total result is that extensive planning is infinitely difficult under a democratic form of government. Indeed there are those who regard it as absolutely beyond the realm of possibility. However, as problems become more complicated and as resources approach the point of complete exhaustion, it would seem that democratic peoples simply must regiment themselves enough to make feasible the necessary amount of long-range, over-all planning. That is not to say that every phase of human life should be regulated by a plan, for there are many fields in which the government can best leave the responsibility to other agencies. But when the very national existence depends upon following a given course, it is essential to surmount differences of opinion, petty jealousies, local interests, and working at cross-purposes which so often characterize the political institutions of the United States.

Over-all Planning A master plan may be required under certain exigencies, but it has its drawbacks, particularly in a democracy. To begin with, it may be virtually impossible to get it adopted. After that obstacle has been surmounted, the plan may be so top-heavy that its very complexity will result in its eventual collapse. There will probably be so many groups shooting at various aspects of a master plan that the entire program will be punctured so full of holes that it cannot do more than keep afloat.

Specific Planning Another form of public planning, which may be designated "specific planning" for want of a better term, occasions less publicity than over-all planning; but it has nevertheless, many strong points. It is less difficult to draft a series of plans relating to specific problems and agencies than it is to prepare a master plan embracing the entire field of governmental activity. Moreover, in a democracy it is far easier to get these less ambitious plans adopted by the necessary authorities, since they will occasion less suspicion and concentrated opposition. After these specific plans have been adopted, there is a further advantage in that they will usually arouse far less organized opposition than would a master plan.

The Problem of Co-ordination It must be admitted, how-

ever, that specific plans have their weaknesses. They may be so incomplete that they can do little to meet a critical situation. Also, one plan may seek to bring about a certain end, while another plan may aim at the very opposite. Any one familiar with the New Deal planning immediately following 1933 will perhaps agree that this was a very serious fault in that connection. If specific planning is to be used—and it appears to offer the greatest advantages in the United States at present—there must be some method by which various plans can be co-ordinated. A single planning agency might be able to serve this purpose if given the proper authority. The chief executive might exercise this power; but he is already so burdened that it is questionable, judging from recent experience, whether he could go far in this direction. A strengthened cabinet, such as Professor Corwin suggests,[10] might be the best agency of all to undertake the necessary integration.

National Resources Planning Board As early as 1933 President Roosevelt issued an executive order creating a National Planning Board. This was reorganized the next year into a National Resources Committee, given independent status, and charged with carrying on a number of studies of pending problems, especially in the conservation area.[11] The formation of state planning boards was encouraged, until most of the states had at least paper agencies of this character. Regional offices sought to co-ordinate the efforts of the state planning authorities with those of the national committee. Congress, representing the popular distrust of planning, became suspicious of the activities of the National Resources Committee and in 1938 refused to make an appropriation for its work; but the President rescued it from its plight and supplied money from other sources. In 1939 the National Resources Committee was reorganized, the Federal Employment Stabilization Office was merged with it, the combination was renamed the National Resources Planning Board, and it was transferred from its independent status to the executive office of the President.[12] For one reason or

[10] See his book *The President: Office and Powers,* New York University Press, New York, 1940, pp. 304-305. See also Chap. 16 above.

[11] The best source of information in regard to this board and its activities is its own report entitled *National Planning Board, Final Report 1933-1934,* Government Printing Office, Washington, 1934.

[12] This was done in connection with the administration reorganization authorized in the act of 1939. This particular change was announced in the Reor-

another this board incurred the enmity of powerful interests, with the result that, despite the support of the President, it was in 1943 ordered dissolved by Congress. No substitute agency was created to assume the responsibility of general planning, but much useful work of this character is currently carried on by the Bureau of the Budget and by the Council of Economic Advisers.

Nature of the Work of the National Planning Agencies The several planning agencies which have carried on their work in Washington since 1933 have produced a number of valuable studies and worth-while recommendations. The whole problem of land use has been investigated. Water use, energy, regional planning, housing, consumption, technology, and population have also come in for attention. The mineral resources of the country have been studied. One of the most valuable reports was made by an urbanism committee set up to investigate the problem of cities.[13]

Departmental Planning National planning is by no means entirely handled by a single agency in the executive office of the President. The Treasury Department, for instance, is engaged in studying the problem of future federal financing. The Federal Security Agency is drafting plans for the future social security program, public health, and public education. The Department of Agriculture is vitally interested in planning for the farmer. Indeed almost every major department of the national government is doing some planning. The efforts may be inadequate or they may be impressive; they may concern only next month or next year or they may attempt to look forward five or ten years; but they cannot, nevertheless, be ignored.

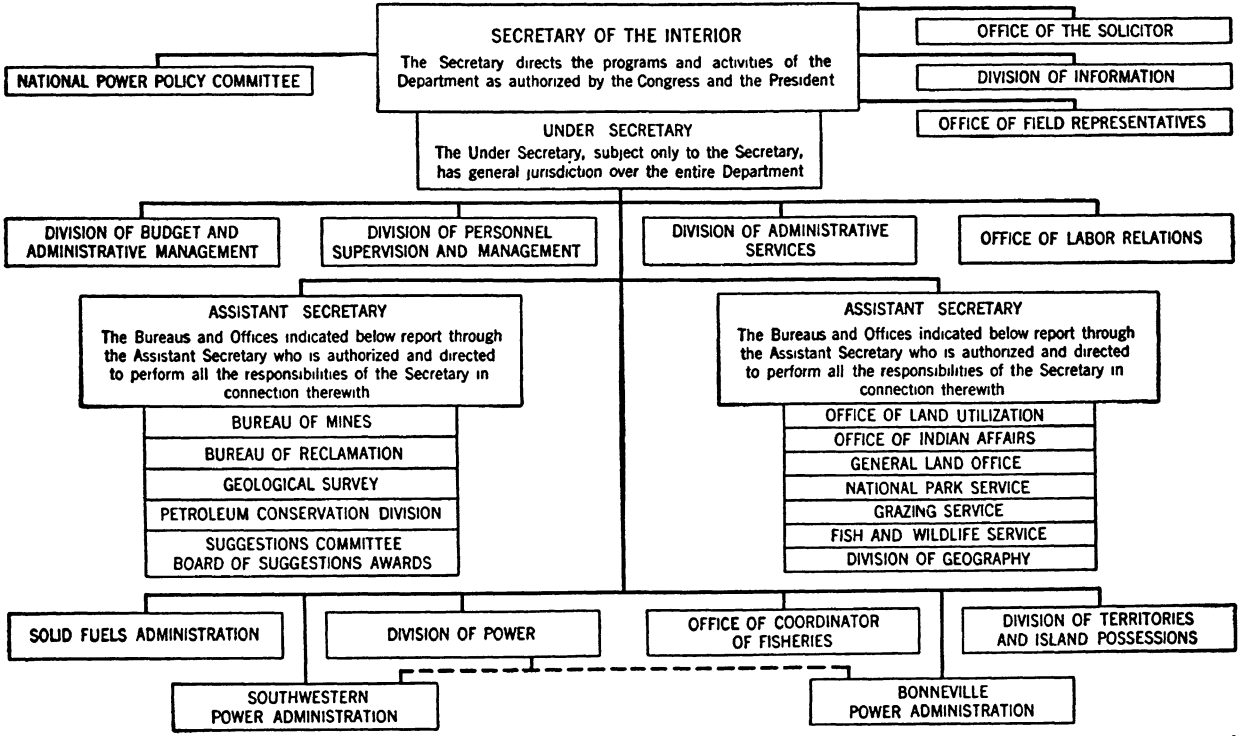
CONSERVATION OF NATURAL RESOURCES

The President's Committee on Administrative Management considered conservation so important that it would have reorganized the present Department of the Interior into a Department of Con-

ganization Plan 1 which became effective July 1, 1939. The Emergency Relief Appropriation Act of 1939 provided that this board should be made up of three persons "from widely separated sections of the United States."

[13] A summary report was issued entitled *Our Cities*, Government Printing Office, Washington, 1937. This was followed by two supplementary volumes containing detailed findings, published by the Government Printing Office in 1937 and 1939 respectively.

UNITED STATES DEPARTMENT OF THE INTERIOR



U.S. Government Manual.

servation[14] that would rank as one of twelve major administrative agencies of the federal government. Congress did not carry out this recommendation and consequently there is no one department which devotes itself entirely to this work. However, the Department of the Interior expends much of its energy on conserving natural resources, while the Agriculture Department and several independent establishments, such as the Federal Power Commission and the Tennessee Valley Authority, carry on important activities in this field.

National Forests One of the earliest conservation activities of the national government was in connection with the preservation of forests. By the end of the nineteenth century it had become apparent that the rich timber resources would not last forever and the movement for the government to acquire some of the remaining forests for preservation began to gain ground. That part of the national domain which was timbered was gradually set aside into a series of national forests scattered over some thirty-three of the states. At present there are approximately 150 of these publicly owned forests which vary from comparatively small acreages to vast stretches exceeding the smaller states in area. If the national forests could be brought together in a single piece of land, they would almost cover the largest state in the union, Texas.

The Forest Service The national forests are supervised by a Forest Service, which is manned by a staff of general administrators, rangers, and tree technicians, in the Department of Agriculture. As timber becomes mature, it may be marked for cutting, for otherwise it might serve no useful purpose after it had deteriorated and perhaps fallen down. Where growth is too thick to permit the proper development of the trees, thinning operations may be undertaken. In those areas which are not sufficiently overgrown with trees, reforestation is often carried on. Under certain conditions ranchers are permitted to use the national forests for grazing purposes, but stringent regulations now control the evil of overgrazing which at one time threatened the forests. Campers and tourists are permitted to use the forests for recreational purposes, although they must pitch their camps only at designated places.

Reforestation While the Forest Service has planted millions of trees within the domain which it controls, the reforestation move-

[14] See the committee's report, *Administrative Management in the United States*, Government Printing Office, Washington, 1937, p. 32.

ment has not prospered in the United States as it has in European countries. The sacredness of private property in the United States has not permitted any large measure of regulation of lumbering and many companies have been so ruthless in their operations that thousands of square miles have been left as barren as if a positive attempt had been made to render them perpetually unfit for human habitation. Not only has no attempt been made to save the small trees which eventually might have replaced those cut but fires have been allowed to burn the topsoil and make the land barren and unproductive.

Forests and Erosion-control The destructive floods and dust storms of recent years have brought home to the American public the importance of forests as a means of holding back water during periods of heavy rainfall and thus preventing wind erosion of the soil. After the record drought in 1934 a much publicized and ridiculed project was started to plant a belt of trees extending for about a thousand miles from North Dakota south to Texas. Many millions of locusts, spruce, jack pine, and other drought-resisting trees have been planted and a large proportion of them have lived in spite of the dire predictions made.

Reclamation Although the United States has large areas of very fertile land, it also includes thousands of square miles of land which are too arid for farming and indeed are often too barren for more than a very little grazing. In some of the arid sections there is so little water available that it would be impossible to reclaim the land. However, in certain places streams fed by the snows and more abundant rainfall of the mountains are adjacent to dry land which lacks only water to make it productive. As early as 1902 a Reclamation Service [15] was set up in the Interior Department to undertake the projects which Congress approved. Since that time numerous areas have been designated for reclamation and hundreds of millions of dollars have been expended on dams, irrigation ditches, and other necessary improvements. Unfortunately political considerations have entered into the selection of the particular projects to receive attention, for the western Senators and Representatives have been quick to realize the political capital that could be made out of reclamation efforts. Every state, and indeed district within

[15] See anon., "The U. S. Reclamation Service," *Service Monograph 2*, Brookings Institution, Washington, 1919.

states, has argued that it should receive its share of the projects. The result has been that some of them have failed entirely and for one reason or another have been abandoned. On the other hand, others have been quite successful and are valuable assets to the states in which they are located. Several of the dams—for example, Hoover, Bonneville, Roosevelt, and Coolidge—are well known and have importance not only for irrigation purposes but also for the generation of power.

Oil Control Although the United States has for some years been the leading producer of oil in the entire world, it is estimated that even its supply may run out within two or three decades.[16] Considering the importance of petroleum products to industry and individual comfort, it has been argued that the federal government should take steps to regulate oil production. During the early years of the New Deal an attempt was made by the federal authorities to prohibit the transportation in interstate and foreign commerce of any petroleum products which were above the amount permitted by state laws or the provisions of the N.R.A. code for the oil industry. The so-called "Hot Oil" case was appealed to the Supreme Court which decided that the federal government had exceeded its authority.[17] Congress then passed a statute which prohibited the shipment in interstate commerce of oil in excess of that permitted to be produced by state laws. To supplement this general law most of the important oil states have joined together into a compact [18] which provides for uniform rules in regard to the amount of oil to be taken from wells.

Soil Conservation Many people do not think of the soil as the greatest of our natural resources, although actually it far exceeds any other natural endowment in importance. Perhaps also the ordinary citizen does not see the relationship of land and conservation, for land is land, they argue. However, it has been increasingly realized that land can be diminished in usefulness or even entirely ruined for the immediate future by soil erosion caused by rain and wind. The carelessness of past years has permitted an amazing amount of land to be ruined beyond easy repair; a larger area has

[16] Estimates vary and are not very dependable because they are based on estimates of consumption and productiveness.
[17] *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935).
[18] In 1945, twelve states had signed the compact.

been threatened with serious damage. Finally in 1936 Congress passed the Soil Conservation and Domestic Allotment Act which authorizes the Department of Agriculture to take vigorous steps toward coping with the problem.[19]

Fish and Game Resources It is a popular belief that any attempts at wildlife conservation are primarily for the benefit of vacationers and sportsmen. Actually, however, while some effort is directed toward providing facilities for nonprofessional hunters and fishermen, the primary aim of conserving natural fauna lies in its economic value. Fish and game are valuable as food and birds provide a natural means of fighting insect pests. Despite a realization in many quarters of the danger to these living resources from uncontrolled and irresponsible hunters and fishermen, the history of the United States is well besmirched with records of complete or partial extinction. Migratory birds have been protected by the Migratory Bird Treaty with Canada, which is enforced together with national game laws by federal game wardens. Herds of elk and bison are protected and in bad winters fed by national park employees and some fish hatcheries are maintained with which to restock streams and lakes. Also, by means of the grant-in-aid system, the states are encouraged to carry on similar wildlife restoration.[20]

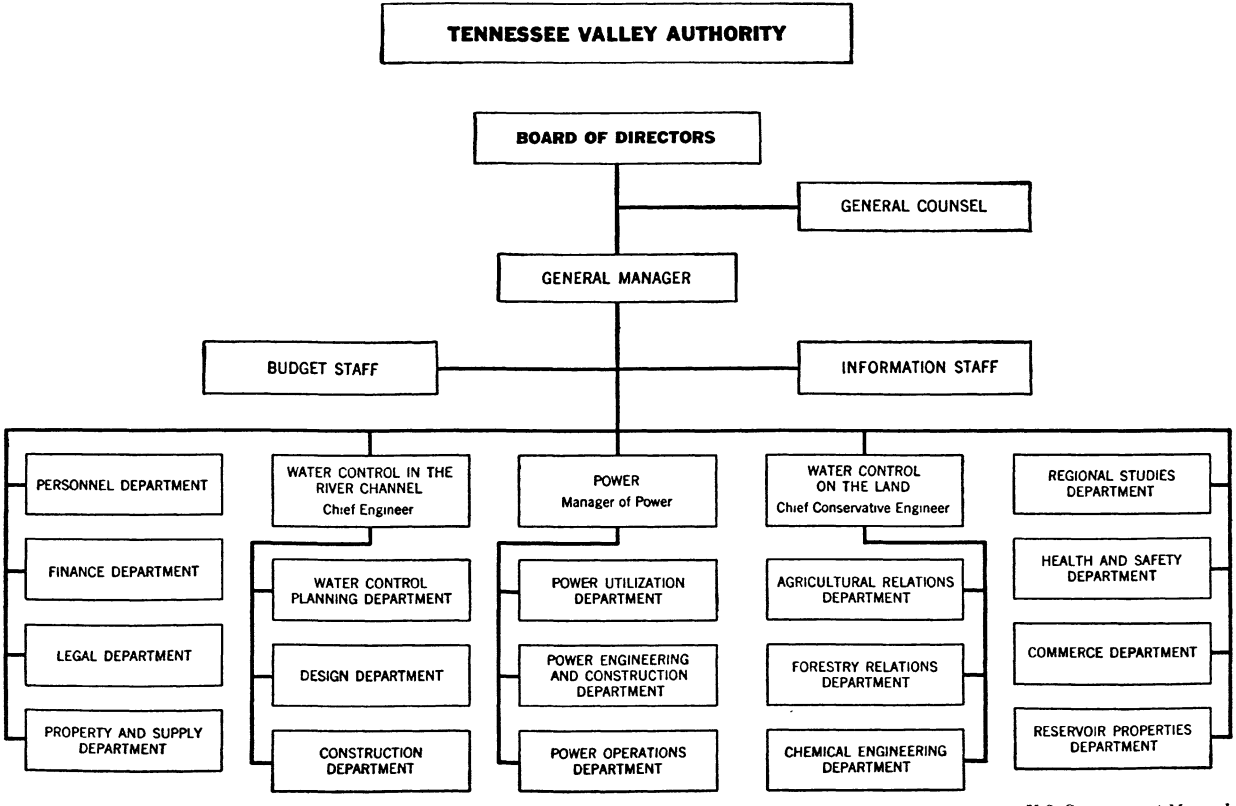
Water Power The United States is fortunate in having many rivers providing large amounts of water power which can be used for generating of electricity. As far back as 1927 Congress created a Federal Power Commission to protect the public interests involved in the development of these resources. The commission found that its task was a difficult one and even with members drawn from the cabinet it did not possess sufficient authority to make much of an impression during its first decade. In 1940 the Supreme Court in the New River case [21] upheld the strict regulation by the commission of the use of public water power by private utilities.

The Tennessee Valley Authority The T.V.A. has been one of the most controversial topics of conversation in the United States since its inception in 1933. It was argued by the government before

[19] See pp. 489, 491 for a fuller discussion of this act.

[20] The federal government is authorized to pay as much as 75 per cent of the cost of such programs.

[21] *United States* v. *Appalachian Electric Power Company*, 85 L. Ed. 201 (1940).



U.S. Government Manual.

the Supreme Court [22] that this agency was intended to further flood control, to improve the navigability of the waters of the United States, and to add to the national defense.[23] However, as a yardstick it is of importance in public planning; as a means of flood control it belongs in conservation. Moreover, its ambitious program of soil-erosion control, reforestation, and development of water power all fit into the general topic of conservation.

Organization and Functions of T.V.A. The Tennessee Valley Authority is managed by three directors who are appointed by the President with the consent of the Senate. In contrast to most of the administrative agencies which have their principal offices in Washington, even if they do not carry on most of their activities there, this authority has its numerous offices, expert staff, and thousands of employees in the territory which it covers.[24] An area of something like forty thousand square miles in seven states, with a population of approximately two million people, has been carved out of the South as an empire for the T.V.A. Here it constructs dams, dredges channels, generates electricity, builds towns, educates the rural inhabitants, seeks to prevent soil erosion, demonstrates the labor-saving devices made possible by cheap electric current, and encourages the towns and cities to provide electricity to their inhabitants at reasonable rates.

Pros and Cons of the T.V.A. Amid all of the claims and counterclaims it is difficult to arrive at an objective evaluation of the Tennessee Valley Authority. Few projects have been more eagerly observed by proponents of public ownership or more savagely criticized by the private-utility interests. If one reads *T.V.A.: Democracy on the March* [25] by a former director of the Authority, one is likely to get the impression that the T.V.A. has wrought a social miracle in much of the territory it covers. It is difficult to

[22] See *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288 (1936).

[23] Its importance in connection with national defense has been well demonstrated, for it furnished much of the power for aluminum production. Additional dams have been authorized on that basis. In order to meet national defense needs the T.V.A. expanded from a capacity of 1,050,000 kilowatt-hours in 1941 to 1,600,000 kilowatt-hours in 1942, and 2,600,000 kilowatt-hours in 1944. During the postwar period T.V.A. has come into the limelight as the supplier of the great amounts of power needed to develop atomic energy.

[24] Main offices are at Knoxville, Tennessee.

[25] By David Lilienthal, Harper & Brothers, New York, 1944.

ignore the improvements that have been effected by the T.V.A. in farming, household appliances, educational methods, and public health.[26] On the other hand, if the utilities are to be believed, the price paid has been tremendous. They say that millions of dollars have been literally stolen by the government from the pockets of the stockholders in private-utility companies; that the entire structure of private business is threatened by the unfair competition offered by the T.V.A. Politicians cry out that T.V.A. is tax free and consequently has placed an unfair burden on the local governments within its territory—even bringing some of them to the brink of bankruptcy. The T.V.A. counters that although it does not pay taxes it pays to the government a sum equal to what taxes would be; moreover, it asserts that it has brought much new taxable property to the area which it serves. It is significant that the people of the valley have displayed a strong support for the T.V.A. as evidenced in 1945 when Senator Kenneth McKellar failed to unseat its able director, David Lilienthal.

Indian Affairs Ever since the earliest treaties between the Indians and the white settlers with their guarantees of Indian rights to specific lands, the white people of the United States have felt some responsibility for the race which they displaced. As a sort of compromise between tearful declamations about the "noble redskin" and the cynical epigram "the only good Indian is a dead Indian," Congress has from time to time set aside what now totals about eighty-two thousand square miles as Indian land. The Bureau of Indian Affairs in the Department of the Interior was created to supervise these lands and in a general way the inhabitants of them.

Selected Bibliography

Black, J. D, *Agricultural Reform in the United States*, McGraw-Hill Book Company, New York, 1929.

Blaisdell, D. C., *Government and Agriculture*, Farrar & Rinehart, New York, 1940.

[26] In 1944 the average T.V.A. domestic consumer used 1,707 kilowatts in contrast to 1,117 kilowatts, the national average; he paid 1.88 cents per kilowatt-hour in contrast to a national average of 3.55 cents. Total production of current ran to 10,117,748,000 kilowatts in 1944; gross revenue to $35,200,000; and sales to 9,110,370,790 kilowatts. The T.V.A. produced 130,000 tons of nitrate fertilizer in 1944 and 100,000 tons of calcium carbide for making synthetic rubber.

Cameron, J., *The Development of Government Forest Control in the United States*, Brookings Institution, Washington, 1929.

Chase, Stuart, *Rich Land, Poor Land*, Whittlesey House (McGraw-Hill Book Company), New York, 1936.

Cheyney, E. G., and T. Schantz-Hansen, *This Is Our Land*, Webb Book Publishing Company, St. Paul, 1940.

Davis, J. S., *On Agricultural Policy*, Food Research Institute, New York, 1939.

Finer, H., *The T.V.A.*, International Labor Office, Montreal, 1944.

Flynn, H. E., and F. E. Perkins, *Conservation of the Nation's Resources*, The Macmillan Company, New York, 1941.

Galloway, G. B., and others, *Planning for America*, Henry Holt & Company, New York, 1941.

Gaus, J. M., and L. O. Wolcott, *Public Administration and the United States Department of Agriculture*, Public Administration Service, Chicago, 1940.

Great Plains Committee, *The Future of the Great Plains*, Government Printing Office, Washington, 1936.

Hawes, H. B., *Fish and Game, Now or Never*, D. Appleton-Century Company, New York, 1935.

Holcombe, A. N., *Government in a Planned Democracy*, W. W. Norton & Company, New York, 1935.

Houck, U. G., and Associates, *Bureau of Animal Industry in the United States Department of Agriculture*, authors, Washington, 1924.

Jacks, G. V., and R. O. White, *Vanishing Lands*, Doubleday, Doran & Company, New York, 1939.

Landis, B. Y., *Must the Nation Plan?* American Country Life Association, New York, 1934.

Lilienthal, David, E. *T.V.A.: Democracy on the March*, Harper & Brothers, New York, 1944.

McCune, Wesley, *The Farm Bloc*, Doubleday, Doran & Company, Garden City, 1943.

Meriam, Lewis, *The Problem of Indian Administration*, Brookings Institution, Washington, 1928.

Millett, John D., *The Process and Organization of Government Planning*, Columbia University Press, New York, 1947.

Parkins, O. E., and J. R. Whitaker, *Our National Resources and Their Conservation*, rev. ed., John Wiley & Sons, New York, 1939.

Pinchot, Gifford, *Breaking New Ground*, Harcourt, Brace & Company, New York, 1947.

Pritchett, C. H., *The Tennessee Valley Authority,* University of North Carolina Press, Chapel Hill, 1943.

Renner, G. T., *Conservation of Natural Resources,* John Wiley & Sons, New York, 1942.

Rolfe, M. A., *Our National Parks,* Benj. H. Sanborn & Company, Chicago, 1937.

Sparks, E. S., *History and Theory of Agricultural Credit in the United States,* The Thomas Y. Crowell Company, New York, 1932.

Stewart, M. S., *Saving Our Soil,* American Council on Public Affairs, Washington, 1937.

Truman, David, *Administrative Decentralization: A Study of the Chicago Field Office of the United States Department of Agriculture,* University of Chicago Press, Chicago, 1940.

Wallace, H. A., *New Frontiers,* Reynal & Hitchcock, New York, 1934.

Worlton, J. T., *Conservation; A Regional Approach,* Board of Education, Salt Lake City, 1944.

26 · *Labor and Social Security*

1 · *The Government and Labor*

The national government has been somewhat active in the labor field for approximately half a century,[1] although it was not until 1903 that formal recognition was extended by establishing the Department of Commerce and Labor. In 1913 a further step was taken when the labor section of this agency was organized into a separate Department of Labor. Though recent years have witnessed a most notable expansion of the national government in the field of labor, much of the program has not for one reason or another been entrusted to the Department of Labor. This situation was recognized in 1945 and some attention began to be given to strengthening the Labor Department. An initial step was taken when the War Manpower Commission, the War Labor Board, and the United States Employment Service were transferred to the Department of Labor.

Recent Attitude of Government toward Organized Labor

The influence of organized labor in the sphere of government has been one of the striking features of the last decade. At a time when the government has had a disposition to subject business to criticism as well as increasingly stringent regulation, it has given official approval to organized labor and aided its growth. Partially as a result of this attitude the membership of labor organizations has undergone a tremendous expansion and reached a point far above the high-water mark of any previous period.[2]

[1] As early as 1882 Congress passed the Chinese Exclusion Act in order to protect native labor against the inroads of cheap coolies from South China. In 1885 Congress carried this protection further by prohibiting contract laborers from Europe from entering the United States.

[2] At the beginning of 1942 the A.F.L. and the C.I.O. together could claim approximately ten million members. The war boom brought the total to approximately fourteen million.

THE DEPARTMENT OF LABOR

General Organization The Department of Labor is headed by a secretary who is a member of the President's cabinet. Until 1933 there was a tradition that the secretary should be a person who had had at least fairly close connections with organized labor. As a matter of fact, newly elected Presidents ordinarily consulted the leaders of the American Federation of Labor before nominating to the post. In 1933, however, Franklin D. Roosevelt decided to bring in his old associate, Frances Perkins, to head the Labor Department. She had had rich experience in the welfare field in the government of New York state and brought with her an impressive background for some aspects of the work of the federal Department of Labor, but she lacked that primary qualification which labor set—she was not herself a member of a labor organization. Her successor named by President Truman in 1945 also marked a departure from the earlier tradition.[3] For purposes of administration the department is divided into bureaus and services which correspond to those to be observed in other administrative departments.

General Functions The Department of Labor is expected to "foster, promote, and develop the welfare of wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." Needless to say, many of its problems are so complicated that no immediate solution is feasible. Nevertheless, despite the fact that much of the direct authority pertains to the states under the police power, the federal department has been able to show substantial accomplishments over a period of years.

Bureau of Labor Statistics As far back as 1885 a Bureau of Labor Statistics was set up to collect information concerning employment, cost of living, hours, wages, strikes, industrial accidents, and other labor problems. When the Department of Labor was organized, this bureau was, of course, included therein. It has performed valuable services not only for its own department but for other agencies interested in working conditions. Obviously it is necessary to have such information before programs can be drafted or laws enacted—that is, if serious errors are to be avoided. Unfortu-

[3] Secretary L. B. Schwellenbach had been a federal judge and United States Senator.

nately this bureau has not always had a very adequate budget and hence has at times not been able to keep abreast of its duties.[4] Perhaps it should be added that some of its studies involve unusual difficulties. Unemployment statistics, for example, present all sorts of problems which would try the resources of any agency.

Children's Bureau One of the best known subdivisions of the Department of Labor until 1946 was the Children's Bureau. In that year most of its functions were moved over to the Federal Security Agency,[5] but a small bureau was retained in the Labor Department to deal with the problem of child labor.

Women's Bureau Another subdivision of the Department of Labor is the Women's Bureau [6] which is charged with studying and improving the conditions of women wage earners. Its studies of various problems relating to the employment of women, its conferences, and its efforts to stimulate state agencies have been valuable.

Division of Labor Standards A third subdivision of the Department of Labor has little direct authority, but it has exerted an influence on industrial commissions, on state labor departments, and on public opinion through its efforts to improve standards of employment. The various studies which the Division of Labor Standards has made are communicated to those state and local agencies which are immediately entrusted with inspecting industrial plants.

Conciliation Service Another subdivision of the Department of Labor, the Conciliation Service, was long overshadowed by the National Labor Relations Board, but it handled a good many cases of labor disputes every year. Before controversies arising between labor and management reach a stage of newspaper publicity, it is often possible to iron them out by skillful conciliatory efforts. The agents of the Conciliation Service were available for this task and ordinarily took the initiative in offering their assistance even in cases involving no interstate commerce. The industrial disputes that make the front pages of the newspapers are those which are so complicated that the endeavors of the Conciliation Service ordinarily did

[4] In 1947 Congress, for example, slashed its already inadequate budget very heavily despite widespread protests.

[5] This was done in connection with the administrative reorganization which the President was authorized to undertake by the Act of 1945.

[6] The early work of this bureau is treated in G. A. Weber, "The Women's Bureau," *Service Monograph 22*, Brookings Institution, Washington, 1923.

not suffice to bring about a settlement. But it settled hundreds of cases which do not reach an acute enough stage for the newspapers to play them up, succeeding in ironing out the differences in about 98 per cent of them.[7] Following the recommendations of the Labor-Management Conference, the Conciliation Service was reorganized in 1946 and its staff considerably augmented. In 1947 Congress saw fit to take the Conciliation Service out of the Department of Labor and stipulated its reconstruction into an independent Federal Mediation and Conciliation Service.

Wages and Hours Division A comparatively new subdivision of the Labor Department is the Wages and Hours Division, which was provided for by Congress in 1938. This division is somewhat less integrated into the Department of Labor than the subdivisions thus far discussed. Its administrator has extensive authority in his own name and is only generally responsible to the Secretary of Labor. The Wage and Hours Act of 1938 under which it operates and which is often referred to as the "Fair Labor Standards Act" applies to workers who are employed in manufacturing, mining, transporting, handling, or otherwise dealing with goods which move in interstate commerce. Any occupation which is necessary to the production of the goods listed also is brought under the terms of the act along with employees in interstate transportation, transmission, and communication. Oppressive child labor is prohibited, which has been held to include children under sixteen years of age except in those cases in which the Children's Bureau has certified that the ages of fourteen and fifteen years are sufficient.[8] A forty-hour[9] week and a minimum wage of 40 cents per hour are specified.

THE NATIONAL LABOR RELATIONS BOARD

General Character of the National Labor Relations Board A National Labor Relations Board is provided by the Wagner Act for the purpose of encouraging collective bargaining and "protect-

[7] For annual figures, see the *Annual Reports of the Secretary of Labor*, Government Printing Office, Washington.

[8] Exceptions are made where work does not interfere with education, health, or general welfare. In manufacturing and mining, however, exceptions are not permitted.

[9] Forty hours per week is merely the standard, not the maximum. For labor beyond forty hours time-and-a-half pay must be given, while on Sundays and holidays double pay is specified.

ing the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. . . ." Originally made up of three members, the size in 1947 was increased to five. One of these serves as chairman and all are appointed by the President with the consent of the Senate for five-year terms. This board has diverse responsibilities which have occasioned some confusion as well as considerable public criticism. Its general counsel decides which cases to press and has to prepare the charges against an employer or an employee charged with unfair labor practices. The board itself sits as a quasi-judicial body in hearing the charges and the defense and finally decides whether the charges have been sustained.

Functions of the N.L.R.B. The National Labor Relations Board has two specific functions to perform. In the first place, it is expected to determine the bona fide representatives of employees for purposes of collective bargaining when there is some dispute over which union has the right to speak. In the second place, it receives, investigates, and hears complaints which have been based on an alleged violation of the terms of the Wagner and Taft-Hartley Acts.

Administrative Responsibilities The magnitude of the first function has been increased not only by the split between C.I.O. and A.F.L. but also by certain provisions of the Wagner Act itself. Previously many corporations had had company unions which perforce included all employees and ordinarily could be easily controlled by the company officials. The Wagner Act outlawed these company-dominated unions and provided that the employees should set up their own organizations. A majority of the employees in any one company could determine the exact form of that organization which, when completed, could speak for all of the employees, even for those minority groups which had opposed the majority action. Inasmuch as two or three sets of leaders or two national labor unions might claim to have the support of the majority of the workers, some method had to be specified for settling the matter. The National Labor Relations Board was assigned this duty which it performs by sending one of its staff of field agents to hold company elections at which the employees concerned vote for the particular representatives whom they desire.

Quasi-judicial Duties The more difficult second function is that of deciding whether an employer or an employee has been guilty of unfair labor practices. When these complaints are filed with the board—and large numbers arise annually—it is the practice to send investigators out to check on them. If these agents find that there seems to be some substance to the complaints, examiners are then detailed to visit the place where the complaint originated in order to hear evidence the employee organization has gathered, as well as to seek additional evidence and hear the rebuttal that the employer may wish to make. The examiner carries his findings to Washington where they are reviewed and if they seem adequate are made the basis for an order or for a hearing by the board itself. If the board is satisfied that a violation of the act has occurred, it issues a cease-and-desist order, which may or may not be accepted by the employer. If the employer or employee refuses to obey the order, the case is carried to the federal courts for final settlement.

Controversy Occasioned by the N.L.R.B. Few government agencies have stirred up more public interest than the National Labor Relations Board. On the positive side, it has been asserted that the board has brought the treatment of labor to a level far beyond any reached in the past. Adverse criticism has been so bitter and so varied that it is difficult to present a résumé here. Employers have accused the N.L.R.B. of almost every crime under the sun. Both the A.F.L. and the C.I.O. have hurled their barbs, each maintaining that the board has unduly favored the other. The Taft-Hartley Act passed by Congress in 1947 over the veto of the President is not likely to have a quietening effect on this controversy. Among its many provisions are those outlawing jurisdictional strikes and secondary boycotts, prohibiting the contributing of labor unions to political funds, requiring labor unions to make public reports as to their finances, and making labor unions legally liable for violations of contracts.

OTHER LABOR AGENCIES

The National Mediation Board In 1920 a Railroad Labor Board was created to assist in the settlement of railroad labor disputes. Six years later Congress authorized a United States Board of Mediation which was succeeded by a National Mediation Board in 1934. This board, consisting of three members appointed by the

President with the consent of the Senate, operates more or less behind the scenes, handling cases which rarely make the newspaper headlines.

The National Railroad Adjustment Board The Railway Labor Act of 1926 provided for the arbitration of disputes between the railroads and their employees. Amendments added to this act in 1934 created a National Railroad Adjustment Board which is organized into four more or less autonomous divisions. Three of these have ten members each and the fourth consists of six members, in every case drawn equally from the employers and employees. The divisions have offices in Chicago, dispose of large numbers of routine disputes relating to wages, hours, and related matters, and report annually to the National Mediation Board. More than three thousand collective agreements are supervised by the divisions of the Adjustment Board.

Compulsory Settlement of Labor Disputes Until early in 1940 labor disputes had for some months reached an all-time low for the present century. Then the newspapers reported one important strike after another and the national defense program was slowed down materially, despite the fact that the national government took over several plants to permit the resumption of work. Representatives of labor and capital finally agreed in December, 1941, to ban all strikes for the duration of the war, submitting disputes to arbitration. However, this agreement did not necessarily bind local labor unions [10] and hence Congress continued consideration of anti-strike legislation, finally passing the unsatisfactory Smith-Connally Act. Early in 1942 the President issued an executive order which provided for the setting up of a National War Labor Board to carry out the no-strike agreement between national labor leaders and captains of industry. The National War Labor Board was placed under the Department of Labor in September, 1945, and subsequently dissolved.

Labor and the Courts Because federal courts have jurisdic-

[10] In January, 1942, according to the National Association of Manufacturers there were 43 strikes involving a loss of 661,976 man-hours. In February, 1942, there were 77 strikes involving 70,905 persons and a loss of 2,028,824 man-hours. The Gallup Poll reported 90 per cent of the American people favoring antistrike legislation. In 1943 the Department of Labor reported that strikes caused a loss of 0.08 of 1 per cent of all man-days during the year.

tion over cases involving interstate commerce and diverse citizenship, they receive a number of labor disputes, even though no federal law may be concerned. Toward the end of the last century the courts began to use the technique of the injunction as an instrument to outlaw strikes and boycotts, to force strikers back to work, and to punish labor leaders for disobedience by a prison sentence for contempt of court. These methods, of course, aroused the indignation and anger of the rank and file of labor and subsequent labor lobbying and pressure resulted in the inclusion in the Clayton Antitrust Act of 1914 of several protective provisions. Labor unions and agricultural organizations were exempted from the operation of antitrust legislation. Injunctions were prohibited in industrial disputes, except to prevent irreparable injury to property or property rights, and were in no case permitted to abridge the right to strike. These safeguards, however, proved inadequate. During the 1920's, because of a broad interpretation of the clause permitting its issuance to prevent irreparable injury to property rights, the injunction became an even more effective weapon to stop strikes. Again in response to the demands of labor, Congress passed the Norris-LaGuardia Antiinjunction Act in 1932. The declared purpose of the act is to limit the jurisdiction of federal courts so that the worker "shall be free from interference . . . of the employers of labor . . . in the designation of representatives . . . or in other concerted activities for the purpose of collective bargaining. . . ." It forbids any injunctions against striking, publicizing strikes, peaceable assembly, or joining a labor union. Further, it provides that when an injunction is absolutely necessary to protect property, the order can apply only to the specific act complained of and not to the strike as a whole. Among other things the act throws safeguards around those charged with contempt of court in labor disputes and outlaws "yellow-dog" contracts.[11] However, in 1947 the Supreme Court in deciding the United Mine Workers case

[11] A "yellow-dog" contract is a promise extracted from an employee by an employer as a condition to be met previous to employment which provides that the employee shall not join a union, shall resign from the union if he is already a member, or shall resign from employment if he prefers to join a union. Such contracts had previously been outlawed by both state and national law but the Supreme Court had refused to uphold the laws in *Adair* v. *United States*, 208 U. S. 161 (1908), and *Coppage* v. *Kansas*, 236 U. S. 1 (1915). Since the court is far more liberal now than then the Norris-LaGuardia Act has not been questioned.

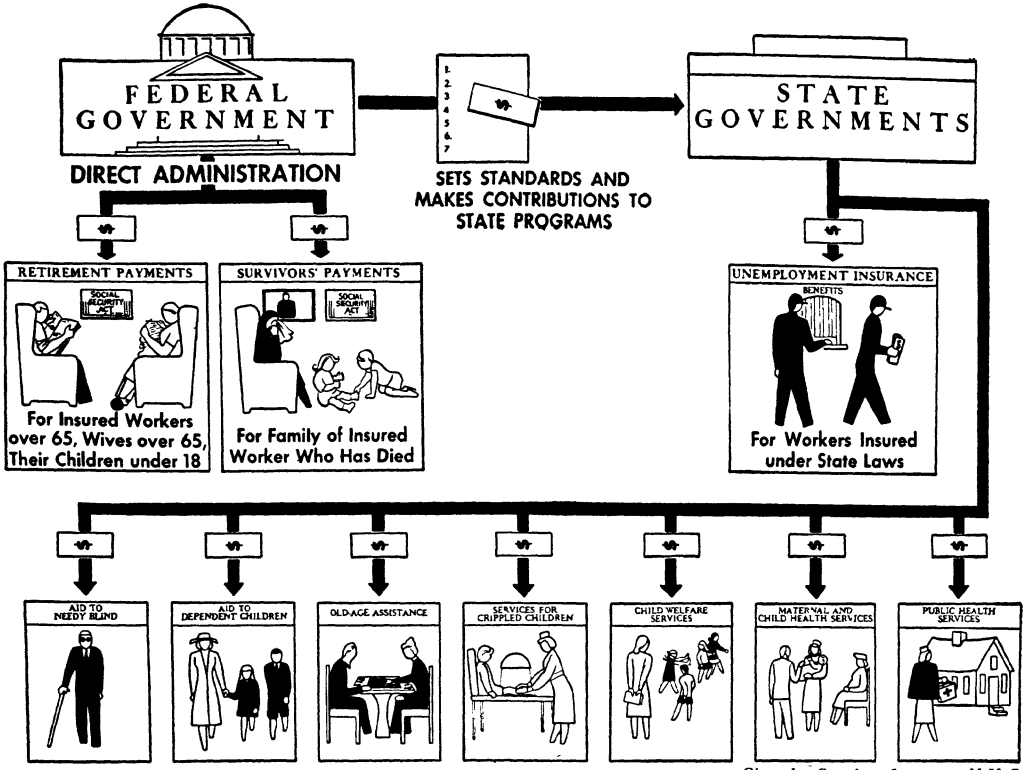


Chart by Graphics Institute, N.Y.C.

HOW THE SOCIAL SECURITY SYSTEM FUNCTIONS

threw some doubt as to whether the Norris-LaGuardia Act prohibits suits brought by the United States against labor unions.

2 · *Social Security*

Although the United States has led the world in such fields as road building and agricultural programs, it has until recently been somewhat indifferent to problems of social security. That is not to say that there was no discussion of old-age pensions, unemployment insurance, and child welfare on the part of individuals and groups. But decade after decade went by without appreciable accomplishment. Severe economic depressions threw millions out of work and led to untold suffering; yet beyond local soup kitchens and other such dribbles little or nothing was done toward setting up any public program of assistance.[12] It was not until the economic breakdown following 1929 deprived twelve million or so persons of their employment, and the state and the local governments exhausted their resources, that the federal government took cognizance of the situation.

Emergency Efforts: 1933-1934 Federal assistance aggregating several billions of dollars [13] in 1933 and 1934 served a very useful purpose—some people are of the opinion that it may have staved off a civil revolution. But it was an emergency sort of activity rather than a permanent program. Nevertheless, the events of the early 1930's did convince many persons, including those in authority in the national government, that the time had arrived when the United States could no longer afford to remain oblivious to its responsibilities for general social security.

Social Security Act of 1935 The result of this realization was far reaching; it led to the enactment of the well-known Social Security Act of 1935.[14] Three general problems received attention

[12] The public efforts which were made prior to 1920 are discussed by Leah Feder in her *Unemployment Relief in Periods of Depression,* Russell Sage Foundation, New York, 1936.

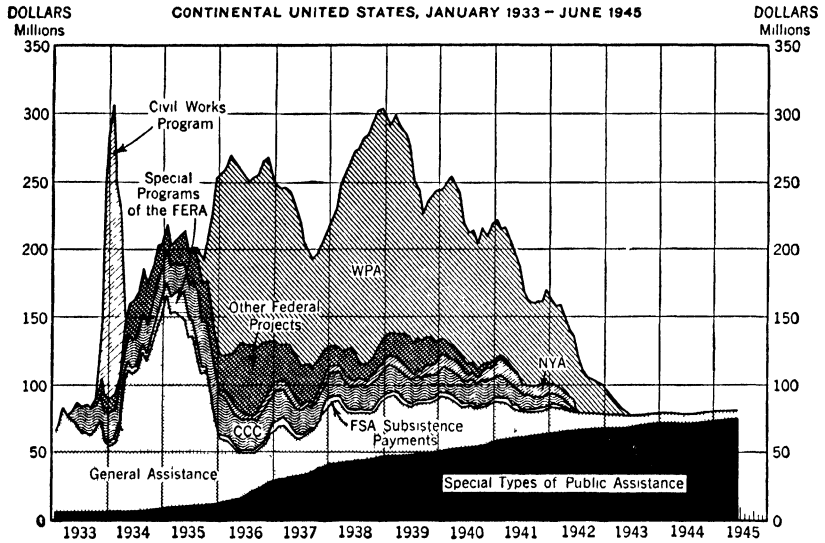
[13] The exact amount is difficult to state. However, during three years Congress appropriated about $8,500,000,000 for the Federal Emergency Relief Administration, the Public Works Administration, the Civil Works Administration, the Works Progress Administration, the Civilian Conservation Corps, and related agencies.

[14] An excellent discussion of this act and its provisions will be found in *Social Security in America,* published for the Committee on Economic Security by the Social Security Board, Government Printing Office, Washington, 1937.

in this omnibus statute: old-age dependence, unemployment, and child welfare. At this point it may be added that the accomplishments of the comparatively brief period since 1935 have been notable. The United States may have been slow to start a program in this field, but, once committed to the enterprise, it has displayed

PAYMENTS TO RECIPIENTS OF PUBLIC ASSISTANCE AND EARNINGS OF PERSONS EMPLOYED UNDER FEDERAL WORK PROGRAMS

CONTINENTAL UNITED STATES, JANUARY 1933 – JUNE 1945



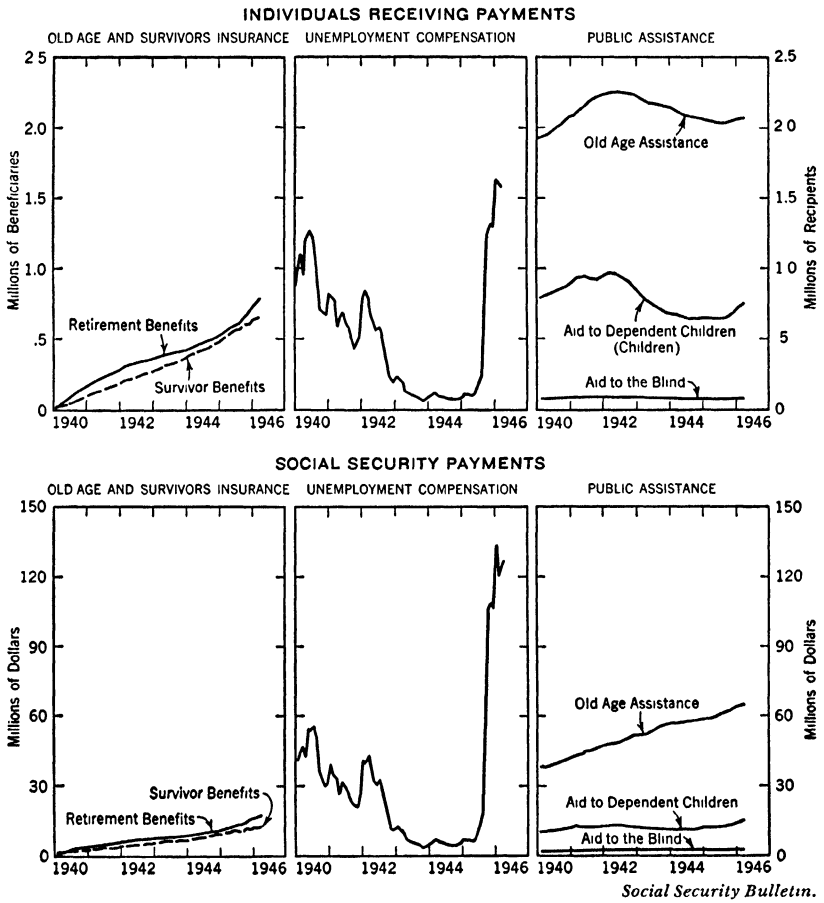
Social Security Bulletin.

distinct vigor in pushing toward goals that other countries have required decades to reach.

OLD-AGE SECURITY

The problem of old age has long been a pressing one; for centuries human beings have lived beyond their periods of self-support. In primitive social organizations the group sometimes assumes responsibility for the support of those who are too old to be productive, but in many instances the aged have been left to starve. Modern society has not condemned all the aged to a status of dependence, for the institution of private property has permitted

large numbers of people to save enough during their active years to maintain themselves in old age. Nevertheless, even in the United States where insurance companies have written more policies than



Social Security Bulletin.

SOCIAL SECURITY PROGRAMS

in the remainder of the world put together and the institution of private property has been jealously guarded, many persons are dependent after the age of sixty-five years. This does not mean that they are necessarily dependent upon charity or public assistance,

for large numbers are, of course, cared for by their children and relatives. Nevertheless, the plight of a large proportion of the aged has until recently been very unhappy, to say the least.

State Pensions for the Aged Even before 1929 a number of states, beginning with Montana in 1923,[15] had set up old-age pension systems. By 1935 some twenty-nine states had such provisions, but with rare exceptions these state pension systems did not have sufficient resources to permit the payment of pensions that were even reasonably adequate.[16] The fact that a majority of the states already had pension systems was important in arriving at a decision about what provisions should be made by the federal government. In passing the Social Security Act of 1935 it was, therefore, decided to enlarge the state efforts by federal grants-in-aid and at the same time to set up a new national scheme of old-age and survivors insurance which would eventually supplant the need for widespread public assistance to the aged.

Old-age Assistance By September, 1938, all of the states had passed the necessary legislation to enable them to participate in the federal grant-in-aid program of old-age assistance.[17] Inasmuch as the national government does not require that all of the states have exactly the same plan, there are forty-eight different systems, each of which serves as a separate financial unit. However, each state must meet certain general standards which the federal government has drawn up. Pensions can be granted only to those persons who are sixty-five years of age or over and who after investigation are shown to have insufficient means to support themselves. In other words, contrary to a rather widespread popular impression, old-age pensions are not paid to all aged people, but only to those who cannot support themselves directly or through the aid of children. As a matter of fact approximately one fourth of those persons sixty-five years or over actually receive assistance, although the propor-

[15] Arizona attempted aid to the aged as early as 1914, but its law was declared invalid on the grounds of vagueness.

[16] During 1928 only some 1,500 persons throughout the United States received old-age assistance, but this increased to 400,000 by 1935. In only five of the states were average monthly pensions above $20 in 1935—in fourteen states the average monthly payment was less than $10 before the Social Security Act became operative.

[17] There are actually fifty-one old-age assistance systems in operation, for Alaska, Hawaii, and the District of Columbia supplement the forty-eight states.

tion varies widely from state to state. The federal government contributes approximately half of the amount which is granted to the individual recipients.[18]

Variation in Amounts Paid Another common supposition is that all recipients of old-age assistance within a single state receive the same monthly grant. Actually the amount given is dependent upon the needs of the person; so one person may be given $15 per month, another $25 per month, and still another $40 per month—all in the same state. The average monthly grant approximates $37 per month, but the individual states range from about $16 to some $65.

Noncontributory Character of Old-age Assistance It should be stressed that old-age assistance, or pensions, to use the common designation,[19] depends entirely upon public funds for support—recipients make no contributions. Inasmuch as only those who have virtually no resources [20] are given the assistance, it is largely a charitable contribution. The states maintain staffs of investigators who interview the applicants, talk to their relatives and neighbors, and otherwise seek to determine how much they are in need of assistance. Political considerations are not supposed to enter at all into the decisions and the federal requirements specifically ban that factor.

Old-age and Survivors Insurance In contrast to old-age assistance, old-age and survivors insurance is handled directly by the national government under terms laid down in the Social Security Act of 1935 and its amendments. With the exception of those who are employed in agriculture, government service, domestic labor,

[18] The maximum was originally $30, but Congress later raised the amount to $40 and then to $45. The federal government pays two thirds of the first $15 and half over that. An increase to $50 seemed probable in 1948.

[19] Social security experts do not approve of the term "pensions" because it implies characteristics which are not associated with these grants. They use the term "public assistance" to refer to this type of benefit and "annuity" to refer to the payments which are made as a matter of contractual right on the basis of payments made beforehand.

[20] The amount of property which recipients are permitted to have varies from state to state. A limited amount of personal property is always permitted and home ownership may or may not be allowed. Where homes are owned, it is usually required that they be turned over to the state after death and that the state have the right to the proceeds from sale up to the amount which has been given in public assistance.

and educational institutions,[21] employees of every sort are included to the number of 41,000,000 persons, with 21,000,000 remaining outside. During working years these employees and their employers are required to pay a regular proportion of wages or salaries into the federal Treasury for the purpose of building up a fund out of which annuities can be paid upon retirement. Those who are covered by the plan may begin to draw annuities, based on the contributions which they and their employers have made, at the age of sixty-five years. The amount which they receive is in general determined by what they have paid in, although the earlier recipients will receive considerably more than that. The maximum monthly payment is $85. The original act did not distinguish between single and married people, but an amendment in 1940 reduced the annuities for the former to some extent. The plan started out without providing for wives', widows', and orphans' benefits and this seemed a serious weakness to many of the participants. Amendments in 1940 remedied this omission by providing that a wife past sixty-five receives half as much as her husband and if she survives him three fourths of his annuity.

The Problem of Rates The Act of 1935 provided that both employees and employers should start out by paying 1 per cent of the wages or salaries into the federal Treasury.[22] This was to be increased to 1.5 per cent for each on January 1, 1940, to 2 per cent in each case in 1943, to 2.5 per cent in 1946, and to a top of 3 per cent in 1949. However, considerable apprehension developed as the money began to flow into the federal Treasury and the early benefits paid were small. Many authorities argued that it was dangerous to build up a tremendous fund for paying claims that would not reach their full proportions for two or three decades. Hence the 1 per cent rate was authorized until 1950. In 1950 the rate is scheduled to go up to 1½ per cent and in 1952 to 2 per cent.

[21] Government employees, of course, have their own pension system. Recommendations have been made which would place domestic labor, educational institutions, and so forth, under the system, adding approximately twenty-one million persons. The President, the Treasury, and the Federal Security Agency have recommended this extension.

[22] It should be noted that these figures are for each of the two parties, not the combined rate. Hence the total tax was to start at 2 per cent and to reach 6 per cent in 1949.

UNEMPLOYMENT SECURITY

Old-age assistance goes far to meet human dependence, but it does not care for cases in which the breadwinner is thrown out of his job because of an economic depression. The wholesale lay-offs and dismissals following the crash of 1929 attained proportions that probably no other country in the world has equaled. Estimates vary as to how many persons were unemployed at the depth of the depression, but competent observers estimate that there must have been from twelve to fifteen million.[23] Some of these did not want employment too badly and many were on the borderline of unemployables, but the great majority, through no fault of their own, found themselves without an income to pay for food, rent, and clothing. Few of them had sufficient reserves to carry them for more than a year, while many were in dire straits within a few weeks. To obviate at least a part of this suffering in the future, it was argued that a system of unemployment insurance should be set up. So in passing the Social Security Act of 1935, Congress included a number of provisions looking toward that end.

Unemployment Compensation Instead of establishing a national system of unemployment insurance it was decided by Congress to entrust this matter to the states,[24] but a federal pay-roll tax of 3 per cent with a 90 per cent offset to those states maintaining approved unemployment compensation plans virtually forced all of the states to do as Congress wished. At present there are fifty-one unemployment systems, since all of the states plus Alaska, Hawaii, and the District of Columbia are engaged in this activity.[25] All of the systems are financed by a pay-roll tax on employers; only two require any contribution by employees; [26] and all but one

[23] During the war years unemployment of course virtually disappeared. There was much difference of opinion in 1945 as to the extent of unemployment following demobilization but actually there was comparatively little.

[24] However, in the years 1941-1942 there was some discussion of bringing unemployment compensation entirely under the federal government in order to make payments more uniform, distribute the burden, and so forth. President Roosevelt favored such a course, but the majority of states were opposed.

[25] Illinois and Montana did not start their payments until July, 1939.

[26] There is considerable opposition to employee assessments among the ranks of organized labor. Hence there is a trend in the direction of abolishing such requirements in those states where they still exist. Ten states originally specified employee contributions.

uses a merit-rating system. The greatest variation has been in the amounts per case paid out in benefits; the wealthier states naturally have been able to maintain a distinctly higher rate than the poorer ones. A plan of bringing the maximum weekly payment to $25 throughout the country by use of federal assistance received wide attention in 1945. The duration of benefits prior to 1945 was generally limited to eighteen weeks, but President Truman and others have fought vigorously to extend this to twenty-six weeks. Ordinarily workers are required to have been employed ten weeks before they can qualify and after they are laid off they must wait from one to three weeks before beginning to draw benefits. The average weekly benefit actually paid is in the neighborhood of $18. Approximately thirty million employees are now covered, although government officials, domestic labor, agricultural workers, and educational, religious, and charitable employees are not included.[27]

Work Relief In order to furnish a substitute for nonexistent private employment during the years following 1933, the federal government spent billions of dollars on a work relief program. Although most governments have preferred the less-expensive direct relief, or "dole," the American psychology of plenty favored work relief. In asking Congress to set up the Works Progress Administration in 1935 Mr. Roosevelt stressed its relationship to the American standard of living, the importance of work relief and improved living conditions, the necessity of finding projects that would absorb large quantities of labor with a comparatively small bill for materials, the importance of locating these projects in communities of greatest unemployment, and the desirability of not competing with private industry. The President in December, 1942, authorized the liquidation of the W.P.A. on the ground that it had served its purpose and there was no longer an unemployment problem.[28] Whether another agency may be set up to furnish work relief is uncertain.

[27] The average number of recipients of unemployment insurance benefits in February, 1945, was 100,076, or one fifth as many as in 1940. By late 1945 this had increased to some 1,700,000 as a result of demobilization. As of November 1, 1947, 636,782 individuals were drawing benefits.

[28] See John Millett, *The Works Progress Administration in New York City*, Public Administration Service, Chicago, 1937; and Arthur MacMahon, John Millett, and Gladys Ogden, *The Administration of Federal Work Relief*, Public Administration Service, Chicago, 1941.

The Employment Service Despite the periodic unemployment in the United States, little has been done in providing public employment offices until quite recently. The great depression of the thirties led the states to take action and by the beginning of World War II every state had its own local employment service. On January 1, 1942, the state systems were taken over by the national government as a national defense measure. Unemployed persons may register at some forty-five hundred offices scattered over the country—if they receive unemployment compensation they are compelled to register. In 1944, 11,400,000 persons were placed in various nonagricultural jobs. As veterans returned to civil life, emphasis was centered on the problem of finding employment for them. Pressure on the part of the various states led Congress to order the Employment Service returned to a state basis after the war. However, despite the return of the Employment Service to the states, the national government still continues to set certain standards and to maintain some degree of co-ordination as a result of federal grants-in-aid.

MISCELLANEOUS

Security for Children Included in the Social Security Act of 1935 were several provisions relating to child welfare. The problem of homes in which the breadwinner has died or is incapacitated has long been a serious one. The federal government now assists the states and territories in making financial allowances to many hundreds of thousands of children. The various state plans vary, but they must meet the minimum standards laid down by the Federal Security Agency. In those states where the programs are such as to meet federal approval, 50 per cent of the cost is assumed by the national Treasury.[29] Aid is regularly given children up to sixteen years and in some instances may be continued beyond that time.

Child Welfare Services In addition to the grants made to dependent children by the Federal Security Agency, the Social Security Act of 1935 authorizes the Children's Bureau to aid "state public welfare agencies in encouraging and assisting adequate methods of community child welfare organization in areas pre-

[29] For an authoritative article on this service, see Jane Hoey, "Aid to Families with Dependent Children," *Annals of the American Academy of Political and Social Science,* Vol. CCII, pp. 74-81, March, 1939.

dominantly rural and other areas of special need . . . and to pay part of the cost of district, county, or other local child welfare services in areas predominantly rural." [30] This money does not go to maintain children in homes or institutions, but provides experts in child welfare and child psychology to furnish services to children needing attention.

Children's Bureau One of the most efficient subdivisions in the entire national administrative setup is the Children's Bureau. This bureau, which was long under the Department of Labor, has had the good fortune to be directed by a succession of very able women whose names have been known throughout the country. Its staff has not been large, but it has been carefully selected from those who have had a considerable amount of professional training in child care. This bureau has been active in studying juvenile delinquency, child hygiene, and other related problems. It has made a very valuable contribution to American life by the preparation and publication of millions of copies of an extensive booklet dealing with the care of small children. Thousands of children during the last two decades have literally been brought up on the basis of this manual, which is readily obtainable from the Children's Bureau. Scientific discussions of the feeding of young children, childhood diseases, standard weights and heights, proper clothing, and the various methods of training are brought together within two covers and couched in easily understandable terminology. During recent years the Children's Bureau has been expanded in order to supervise the child-health, child-welfare, and crippled children's program of the Social Security Act of 1935.

Assistance for the Blind Another provision of the Social Security Act of 1935 relates to the blind. Several states have long made some attempt to pension these people as well as to maintain schools for their training. The federal government contributes half or more of pensions up to $45 per month in those states which have passed legislation meeting its standards. About eighty thousand blind persons are receiving pensions which average about $40 per month.[31]

Security for the Handicapped There are approximately 125,000 persons in the United States at any one time who need vocational rehabilitation because of physical handicaps. A program

[30] See Mary Irene Atkinson, "Child Welfare Services," *ibid.*, pp. 82-87.
[31] An increase in the maximum to $50 seemed probable in 1948.

was instituted for these people as early as 1920 by Congress, but the Social Security Act of 1935 stipulates the extension and permanence of this service. Federal funds to the amount of several million dollars are distributed annually among the states and territories that have agreed to match federal grants and meet federal requirements. Artificial limbs are purchased, vocational training is given, and an attempt is made to secure suitable jobs for these unfortunates after their training has been completed.[32]

Health Security for Mothers and Children Still another provision of the extraordinarily important Social Security Law of 1935 charges the Children's Bureau with promoting the health of mothers and children, and with diagnosing and treating crippled children.[33] Fifty-one states and territories have qualified for federal grants-in-aid under the first program and fifty for the crippled children's work. Several million dollars is distributed annually among the states and territories.

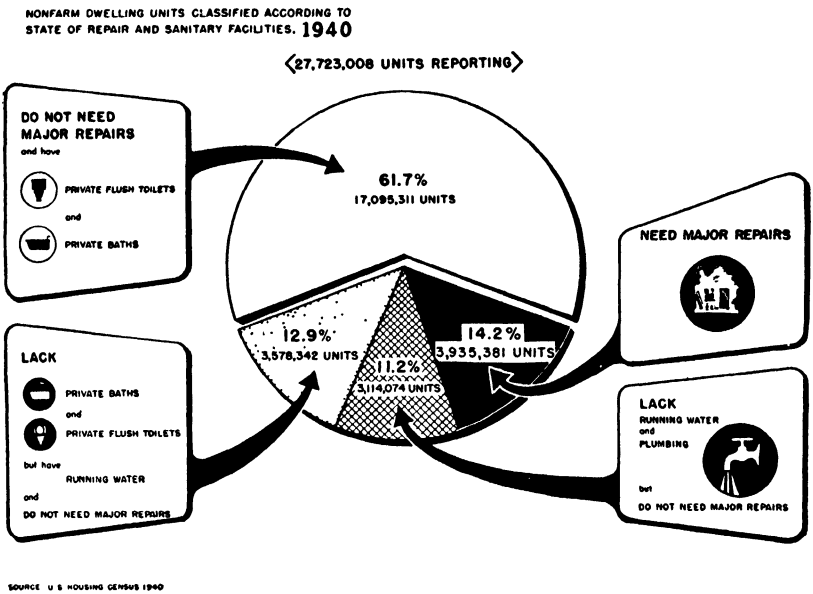
United States Public Health Service Long under the Treasury Department, the United States Public Health Service has appropriately been transferred to the Federal Security Agency. This service is well known for its work in stamping out yellow fever, its co-operation with the Latin-American republics in meeting difficult health problems, and its campaign to deal with venereal disease. Also, it inspects vessels coming to the United States from foreign ports. However, it has not thus far been given a great deal of authority in connection with the general health of the country. An elaborate report was formulated in 1938 which was presented to a National Health Conference held in Washington. It was stated that one third of the population of the country is receiving "inadequate or no medical service," that "preventive health services for the Nation as a whole are grossly insufficient," that "hospital and other institutional facilities are inadequate in many communities," and that more than a third of the population "suffers from economic burdens created by illness."[34] A federal program of grants-in-aid which would eventually require the expenditure of several hundred millions of federal funds each year was proposed.

[32] See John A. Kratz, "Security for the Handicapped," *ibid.*, pp. 100-104.

[33] See Katherine F. Lenroot, "Health Security for Mothers and Children," *ibid.*, pp. 105-115.

[34] See G. St. J. Perrott and D. F. Holland, "Health as an Element in Social Security," *ibid.*, pp. 116-136.

The opposition of the medical profession and the plea of economy have thus far prevented any action on this proposal, although there has been much discussion of the problem and the work of the committee is being continued. The shocking state of health of the young men called for military training [35] may focus the attention of the nation on the importance of health.



QUALITY OF EXISTING HOUSING IN THE UNITED STATES

Office of Education The United States Office of Education is included in the Federal Security Agency at present, although it was long in the Department of the Interior. Its work is not directly related to social security, but it is certainly indirectly concerned with these problems as well as many other problems. The federal government does not at present engage in direct educational activities beyond conducting Howard University for Negroes in

[35] Some forty-three out of one hundred in the supposedly most healthy age group were found somewhat unfit, although fifteen of this number were reclassified for limited military service or active service after correction of defects.

Washington. Yet the Office of Education is credited with considerable influence in American education. Its research projects lead to the publication of numerous valuable reports. Its citizen training program and experiments in adult education have been significant. A division handles the exchange of professors and scholars with foreign countries. Another is attempting to integrate the in-service training programs of the various agencies. If the proposed federal aid plan which calls for the spending of hundreds of millions of federal money for improving educational standards is finally adopted, this office will doubtless have even more to occupy its attention.

THE PUBLIC HOUSING PROGRAM

The housing activities of the national government are entrusted to the Housing and Home Finance Agency; but since they are of particular interest as a means of social security and social improvement, they may be considered at this point.

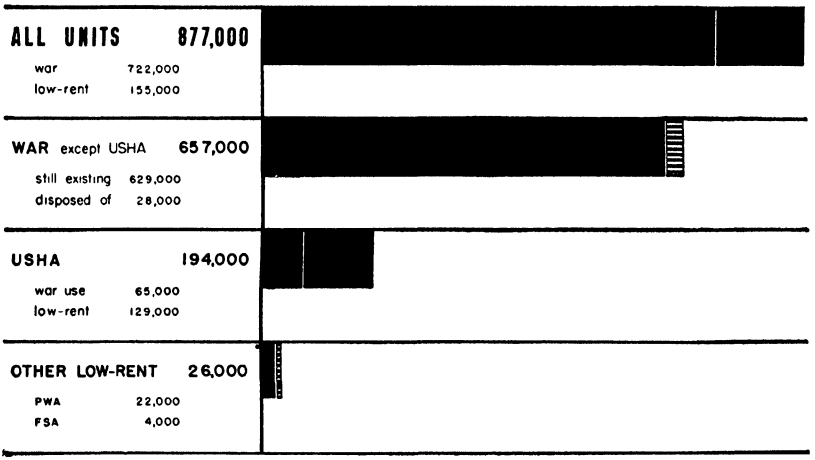
Indifferent Record Prior to 1937 It is probable that no major country in the world has been so indifferent to public housing as the United States. Surveys have indicated that a substantial proportion of the housing facilities now in use is entirely outmoded, while approximately 10 per cent is actually unfit for human habitation.[36] The United States has some of the worst metropolitan slums in the entire world, while some of the coal camps and industrial towns are equally shameful blots on our record. Nevertheless, prior to 1937 almost no improvement was attempted. Cities occasionally undertook to clear limited areas and to construct low-cost housing facilities, but they had neither the financial resources nor the inclination to do more than a drop in the bucket, so to speak.

The Housing Act of 1934 In 1934 a National Housing Act was passed which instructed the Public Works Administration to undertake a limited amount of public housing construction. The P.W.A. set up some fifty projects located in thirty-six states as direct responsibilities of its housing division. In addition, it announced that it would assist limited-dividend corporations in financing low-rental housing construction. The public undertakings have varied in their usefulness and general success. Although several in-

[36] See the report of the investigations conducted by the W.P.A. in 1936.

surance companies responded, the efforts to interest private corporations did not prove too successful because private capital was not attracted by the terms offered.

The Wagner-Steagall Act of 1937 The first genuine housing act was passed by Congress in 1937—the earlier acts had been principally interested in giving employment and extending relief rather than in providing low-cost housing. The act of 1937 provided for a United States Housing Authority with an initial bor-

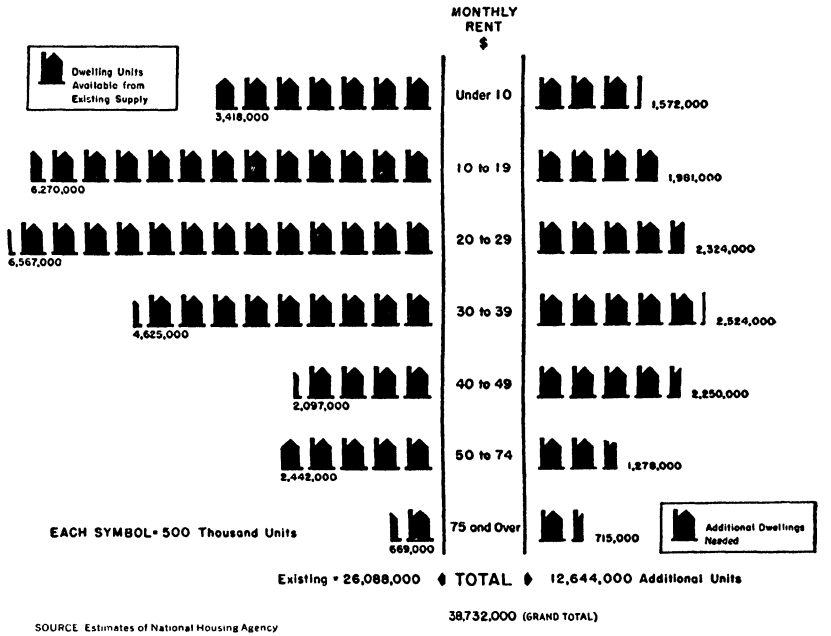


FEDERAL PUBLIC HOUSING PROGRAM—DWELLING UNITS, AS OF JUNE 30, 1945

rowing power of $500,000,000. This agency, which was a part of the Federal Works Agency, had an administrator at its head and maintained a fairly elaborate staff in Washington, but it did not engage directly in the construction of housing. Instead it received proposals from state or local housing authorities. If it deemed the proposals sound, it agreed to lend up to 90 per cent of the cost of building, or to make capital grants up to 80 per cent of the amount required, or to offer annual contributions not to exceed an aggregate of $20,000,000 during a three-year period if the local authority put up an amount at least one fifth as large. These projects are intended for urban dwellers, must displace an equal amount

of slum dwellings, and may be rented only to those whose incomes do not exceed a stated sum.

Defense Housing Problems The national defense program brought additional housing problems both to the national government and the local governments. Cities found themselves faced with the necessity of accommodating additional thousands brought in to



DWELLING UNITS NEEDED IN 1955

furnish labor for greatly expanded munitions works. The construction of powder plants in rural areas required provision for large numbers of workers and their families in places where almost no housing facilities were available. Private endeavor contributed toward meeting the need, but the national authorities found themselves faced with an insistent demand that they supplement these efforts. The result was that Congress from time to time appropriated a good many million dollars for the construction of low-cost

housing in defense areas. Instead of making use of the existing United States Housing Administration, political and personal considerations led to the entrusting of this task to other agencies of the federal government, especially to other subdivisions of the Federal Works Agency.

Creation of the National Housing Agency By 1942 some sixteen different federal administrative agencies were more or less active in the housing field. Frequently their efforts were far from co-ordinated. The situation became so unsatisfactory that the President issued an executive order on February 24, 1942, creating as a wartime measure a new National Housing Agency which was entrusted with the responsibilities which had been exercised by the sixteen separate agencies hitherto active in promoting public and private housing. In 1947 this step was made permanent through Reorganization Act No. 3, though the name of the organization was changed to the Housing and Home Finance Agency. Three general divisions of this new department were set up: the Public Housing Administration, the Federal Housing Administration, and the Home Loan Bank Board. The first was given full responsibility for housing constructed with public funds, thus taking over the work of the former U.S.H.A. and the various defense housing bureaus. The second and third deal with the financing of private home construction and ownership.[37] Time will be required to determine the full results of this action, but it is to be hoped that the formal recognition accorded housing together with the co-ordination of federal efforts in the field will bring about the substantial progress which has so long been called for. With the demobilization program under way it became apparent that housing for veterans constituted a major problem. The President appointed a federal housing expediter to do everything possible to see that 2,700,000 housing units were built during 1946 and 1947. A grand total of more than ten million new housing units will be required during the decade beginning in 1946.

Selected Bibliography

Abbott, Edith, *Public Assistance*, University of Chicago Press, Chicago, 1940.

[37] The functions of these divisions are discussed in Chap. 23.

Atkinson, R. C., Ben Deming, and Louise Odencrantz, *Public Employment Service in the United States*, Public Administration Service, Chicago, 1939.

Brown, Josephine, *Public Relief*, Henry Holt & Company, New York, 1940.

Bufford, C. M., *The Wagner Act*, Lawyers Cooperative Publishing Co., New York, 1941.

Charnow, John, *Work Relief Experience in the United States*, Social Science Research Council, Washington, 1943.

Douglas, P. H., *Social Security in the United States*, rev. ed., McGraw-Hill Book Company, New York, 1939.

Ebenstein, William, *The Law of Public Housing*, University of Wisconsin Press, Madison, 1940.

Epstein, A., *Insecurity: A Challenge to America*, rev ed., Random House, New York, 1938.

Federal Activities in Education, Educational Policies Commission, Washington, 1940.

Fisher, T. R., *Industrial Disputes and Federal Legislation*, Columbia University Press, New York, 1940.

Grant, M., *Old-Age Security*, Social Science Research Council, New York, 1939.

Green, William, *Labor and Democracy*, Princeton University Press, Princeton, 1939.

Howard, D. S., *The W.P.A. and Federal Relief Policy*, Russell Sage Foundation, New York, 1943.

Johnsen, Julia E., comp., *The National Labor Relations Act*, The H. W. Wilson Company, New York, 1940.

Kaltenborn, H. S., *Governmental Adjustment of Labor Disputes*, Foundation Press, Chicago, 1943.

Lansdale, R. T., and others, *The Administration of Old Age Assistance*, Public Administration Service, Chicago, 1939.

Macmahon, Arthur W., John D. Millett, and Gladys Ogden, *The Administration of Federal Work Relief*, Public Administration Service, Chicago, 1941.

Millis, H. A., and R. E. Montgomery, *Labor's Risk and Social Insurance*, McGraw-Hill Book Company, New York, 1938.

Muntz, E. E., *Social Security*, American Enterprise Association, New York, 1944.

Rauschenbush, Carl, and E. Stein, eds., *Labor Cases and Materials*, F. S. Crofts & Company, New York, 1941.

Smillie, W. G., *Public Health Administration in the United States*, rev. ed., The Macmillan Company, New York, 1940.

Spencer, W. H., *The National Labor Relations Act*, University of Chicago Press, Chicago, 1935.

Stewart, M. S., *Social Security*, rev. ed., W. W. Norton & Company, New York, 1939.

Straus, Nathan, *The Seven Myths of Housing*, Alfred A. Knopf, New York, 1944.

Strauss, M. W., and T. Wegg, *Housing Comes of Age*, Oxford University Press, New York, 1938.

White, R. Clyde, *The Administration of Public Welfare*, American Book Company, New York, 1940.

Woll, M., *Labor, Industry, and Government*, D. Appleton-Century Company, New York, 1935.

27 · *Foreign Relations*

FOREIGN POLICY OF THE UNITED STATES

The foreign relations of the United States have been conditioned in large part by the foreign policy which has been followed. Some observers profess to see nothing in the record of the last century and a half that can accurately be designated "foreign policy," maintaining that the United States has been purely opportunistic in its dealings with other nations. Perhaps if one holds a very strict interpretation this attitude may be tenable, since a consistent policy on the part of any nation over a long period of time is, to say the least, unlikely. World situations change and give rise to new problems which in turn have their impact upon the foreign policies of the various governments. Nevertheless, irrespective of any vacillation and indecision, the United States has maintained certain points of view which have played a large part in determining its role in international affairs.

Isolation The warp upon which the United States has woven its intricate pattern of foreign relations has been isolation. From the earliest days of the republic, when George Washington delivered his famous words dealing with entangling alliances, to the infamous attack made by Japan on Pearl Harbor in 1941, there had been a deep-seated desire on the part of large numbers of people to avoid more than routine relations with other nations. As individuals the American people have been fond of traveling outside of their own country and at times public opinion has supported active participation by the United States in world affairs. But when the outcome of such participation has been disappointing and especially when it has appeared that the United States was being duped, the net result has been to strengthen the general suspicion of European diplomacy. The isolationist attitude has doubtless been based in part on the geographical location of the United States in relation to other major world powers. Moreover, the fact

that the natural resources have made the country self-sufficient to a degree far beyond that of most other nations has entered in. When Japan sent her bombers to Hawaii and her scouting planes over the Pacific states, it became apparent that this supposed geographical isolation was less than had been imagined. Developments since 1941 may indicate that isolation has finally ceased to be the basic element in American foreign policy. The authorization by Congress in 1948 of the Marshall Plan looking toward world recovery may be cited as an example of a move away from isolation.

Hemisphere Security Though the United States has regarded international relations with a wary eye, she has insisted that the Western Hemisphere be posted against European aggression. In 1823 President Monroe sent a message to Congress in which he declared: "We owe it therefore to candor and to the amicable relations existing between the United States and those powers [the European nations] to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety." This doctrine was long interpreted as reserving the Western Hemisphere as a sort of sphere of influence to the United States and as such was naturally resented by the Latin-American states. Recent Presidents have sought to correct the impression that the doctrine was based on the desire of the United States to dictate what should be done in the Americas, stressing the community aspects and joint responsibilities shared by all of the countries.

Imperialism Despite the attachment of large numbers of people for isolation, several elements of the population of the United States have been anxious at times to have the government acquire additional territory and support economic penetration of other countries. As late as the nineteen thirties there was still much pressure to have the United States protect the investments of its citizens and corporations in Central America, even to the point of intervention. The last marine detachment was withdrawn from the Caribbean region as recently as 1934, while the three marine establishments in China were maintained until the very eve of the war with Japan.[1] The interest in some quarters in having the United

[1] These garrisons were maintained under the terms of the Boxer Agreement with China and cannot be considered as military forces to protect trade interests. Their very size was such that they could do little more than serve

States control numerous Pacific islands and retain air and naval bases established in South America and Africa during World War II in the postwar period has been interpreted by some as a resurgence of imperialism.

Desire for World Peace However suspicious they may have been of foreign governments, the people of the United States have favored reasonable efforts to bring about a state of peace throughout the world. World War I received the support of large numbers of people because it seemed that the defeat of the German Imperial Government might remove the main obstacle to world peace. Isolationism, personal antipathies, and partisan politics prevented the United States from joining the League of Nations, but they were not sufficient to nullify several other efforts in the direction of peace.

United Nations Charter Early in World War II public opinion in the United States became quite active in the direction of making provisions for machinery which would promote world peace in the postwar period. Following the Dumbarton Oaks sessions in Washington, at which ministerial representatives of the great nations canvassed the situation, a United Nations Conference was held in San Francisco in 1945 to draft a charter making provision for the organization to settle international difficulties without recourse to war. In contrast to its record in the case of the League of Nations, the United States achieved the distinction of being the first nation to ratify the United Nations Charter and with only two dissenting votes on the part of the Senators.

United Nations Machinery In many respects the machinery set up by United Nations bears at least a superficial resemblance to the League of Nations. A United Nations Security Council, on which China, France, Great Britain, the Soviet Union, and the United States have permanent seats and six other nations temporary representation as designated by the General Assembly, has the primary responsibility for taking action on matters that might lead to war. It refers cases of legal differences to an International Court of Justice, problems relating to dependent areas to a Council on Trusteeship, and social and economic matters to the Economic and Social Council. In case these agencies are not able to handle

as a token of American interest in the Far East. The garrison at Peiping was intended to guard the embassy of the United States.

the situation, the Security Council again takes jurisdiction. The General Assembly of the United Nations Organization is made up of representatives of all members of the United Nations, meets once each year in regular session, and serves as a clearing house for the ideas of the various nations. A Secretariat, made up of a secretary-general and five deputies, maintains records and provides the routine machinery for the work of the United Nations Organization. The Economic and Social Council, with eighteen members elected by the General Assembly for terms of three years, investigates international economic, social, cultural, educational, and health problems and makes recommendations as to appropriate action to be taken by the United Nations. A Council on Trusteeship has one of the most difficult fields to cover since it is charged with handling dependent areas, including mandates and territories voluntarily placed under its jurisdiction by nations responsible for the administration of the latter. Though not provided in the San Francisco Charter an Atomic Energy Commission exists under the United Nations because of recommendations made by the President of the United States and the Prime Ministers of Great Britain and Canada. The United States has taken a very active part in the United Nations from the beginning.

Importance of International Understanding The experience of recent years has demonstrated that it is of first-rate importance that the representatives and indeed the people of the United States have an understanding of the history, culture, problems, and aspirations of other nations. Without such knowledge it is difficult to fix a realistic foreign policy for the United States and certainly impossible to maintain satisfactory working relations with the other governments of the world. As long as the war against Germany and Japan welded the allied nations together into at least a considerable degree of unity, it was possible to get along reasonably well without full understanding, but, with the fighting over, it became apparent almost immediately that the backgrounds and problems of the United States, Great Britain, the Soviet Union, China, and France, to say nothing of the smaller nations, are so diverse that progress in handling international problems can be achieved only when mutual understanding prevails. This does not mean, as some believe, that the United States must disregard its own interests or that it must give way blindly to the desires of

other nations. It is more a matter of achieving in the field of international relations the political maturity which everyone takes for granted in satisfactory dealings between states, local governments, or even individuals at home.

THE DEPARTMENT OF STATE

The Lack of a Foreign Office in the United States It is traditional among governments to maintain a foreign office or a department of foreign affairs.[2] It sometimes strikes foreign visitors as strange that a nation as powerful and wealthy as ours should not consider it essential to maintain a department given over exclusively to the conduct of foreign affairs. However, the actual situation involves less amalgamation than appears on the surface, for the Department of State devotes a far greater part of its energy to external than to domestic problems.

History and Rank of the State Department The Department of State was established almost immediately after the government provided by the Constitution of 1787 began to operate. Because of its age as well as the importance of its functions, the Department of State stands first, on the basis of formal precedence, among the administrative departments of the United States. Its secretary sits immediately to the right of the President at cabinet meetings and is the ranking administrative official in Washington. Its prestige is high, its influence often decisive, and its functions of first-rate importance. No other department can boast of so long a line of distinguished secretaries.[3]

General Organization of the Department The Department of State is organized into several subdivisions,[4] some of which are geographical in character and others of which follow functional principles. Immediately below the secretary there is an undersecretary, who during recent years especially has been in the limelight. An adviser on legal matters, particularly points of international

[2] Argentina is another case where there is no agency devoted entirely to foreign affairs. In that government religious affairs are combined with foreign affairs in a single department.

[3] For biographical studies of the long line of holders of the office, see S. F. Bemis, ed., *The American Secretaries of State and Their Diplomacy*, 10 vols., Alfred A. Knopf, New York, 1927-1929.

[4] In 1948 there were seventeen major subdivisions known as "offices" and these were in turn broken down into eighty-four divisions.

law, assists the secretary and the undersecretary in general administration. Then there are the assistant secretaries of state who are charged with responsibility for certain aspects of the work of the department.[5] Directly under these officials are the various subdivisions which carry on the actual services.

Geographical Subdivisions Four geographical divisions oversee the embassies, legations, and consulates of the United States in the following parts of the world: Europe, the Far East, the Near East and Africa, and the American republics. These are subdivided into from four to six sections each specializing on smaller areas. These offices are in constant touch by wireless telephone, radio, cable, personal agent, and mail with the representatives of the United States throughout the world.

Commercial Divisions There are several divisions of the state department which have to do mainly with international commerce. These are subdivided into numerous sections which are staffed by large numbers of specialists. In this connection it may be pointed out that the President transferred the foreign service officers of the departments of Commerce and Agriculture to the Department of State as of July 1, 1939. As Germany and certain other governments attempted to break down what free world trade remained by introducing exclusive barter deals, Secretary Hull bent every effort to counteract such practices by negotiating reciprocal trade agreements with various foreign governments. In 1933 Congress authorized the President to make these within certain limits without the necessity of senatorial ratification. Negotiations were undertaken with a number of foreign governments with whom it appeared that there was a common basis for concessions. The result was that substantial progress was made in reducing the paralyzing trade barriers which hindered American commerce during the twenties. Attempts to arrive at some mutual understanding failed in a few cases, notably that of Argentina, but reciprocal trade agreements involving important concessions were entered into with Great Britain, Canada, Brazil, Belgium, China, and a number of other governments. In 1945 Congress after considerable

[5] One deals with economic affairs; a second congressional relations; a third European, Near Eastern, African, Far Eastern affairs and American republics; a fourth public and cultural relations; a fifth administration; and a sixth occupied areas.

debate authorized the President to reduce tariffs a further 50 per cent in certain instances, making possible a maximum cut of 75 per cent in formal tariff rates. During the post-war period the commercial subdivisions of the State Department have been active participants in the International Trade Organization set up under the United Nations.

Passports and Visas During normal times, when thousands of American citizens travel in foreign countries, the Passport Division of the State Department has sometimes resembled a madhouse. In addition to the main office in Washington, this division operates branches in New York City, Chicago, and San Francisco. Applications which set forth detailed biographical information in regard to the holder of the passport must be sworn to and must be accompanied by a photograph of the applicant as well as valid proof of United States citizenship. The fee charged is $9.00. Passports, which are in the form of small leatheroid booklets and serve to identify the bearer as a citizen of the United States, are good for two years and may be renewed for an additional two years. Visas of passports are granted to foreign citizens who wish to visit the United States by the Visa Division of the State Department.

Miscellaneous Divisions The Divisions of Research and Publication maintain an extensive library which includes the archives of the State Department. They are charged with the preparation and publication of the volumes which record the foreign relations of the United States.[6] A Treaty Division has for some years been engaged in a monumental work of editing and publishing definitive texts of the more than nine hundred treaties to which the United States has been a party since 1789. The Office of Information and Educational Exchange seeks to promote cordial relations with other countries through exchange of students and professors, art and book exhibitions, radio broadcasts, and many other means.

Domestic Functions In addition to its duties which relate to the conduct of foreign relations, the Department of State is charged with several other responsibilities. It keeps the great seal of the United States which must be attached to certain public documents as an evidence of authority and authenticity. Its secretary must countersign the proclamations which the President issues from time to time. Communications between the national government and

[6] Published in yearly volumes entitled *Foreign Relations of the United States.*

the states are usually handled as far as the former is concerned by the Department of State. After bills have been passed by Congress and approved by the President, they go to the Department of State, where they are printed with other acts in the *Statutes at Large of the United States*, promulgated, and their originals preserved in the archives.

THE FOREIGN SERVICE

The Rogers and Moses-Linthicum Acts For many years the Foreign Service of the United States was rather intimately tied up with politics. That is not to say that there were no competent officials representing the United States in foreign countries, nor that there were no persons in the service who made a career out of diplomacy. After many proposals had been made looking to the reorganization of the foreign service, the Rogers Act was finally passed in 1924. This act placed the American representatives below the ranks of ambassador and minister on a career basis and provided that admission to the service should be by competitive examination only. The former diplomatic and consular services were joined together into a Foreign Service of the United States. It provides that promotion be based on service records. A contributory pension scheme which permits retirement after thirty years of service and compulsory retirement at the age of sixty-five years was set up. The Moses-Linthicum Act supplemented the earlier Rogers Act by bringing the clerical employees attached to the Foreign Service also under the merit system. In 1946, Congress took occasion to enact another basic act which reduced the number of classes, increased the compensation and allowances, and generally strengthened the Foreign Service.

Ambassadors and Ministers not Included Unlike some other foreign services, the British for example, the career Foreign Service of the United States does not include ambassadors and ministers. Although these important officials have intimate relations with the career service and certainly must be considered essential to the conduct of foreign relations, still they do not belong to the career service and receive their positions by presidential nomination and senatorial confirmation. The result of this method of appointment, of course, is that politics has not a little to do with the selection of the heads of embassies and legations. Wealthy men of affairs

who have ambitious wives make generous contributions to the campaign chests of winning political parties and on such grounds feel themselves entitled to posts as minister or ambassador. Some of these amateur diplomats manage to get along reasonably well, while others are so impossible that they occasion diplomatic gossip the world over. A certain Latin-American country a few years ago received in succession two American ambassadors who had had little or no previous experience in foreign affairs, who had read hardly anything of serious nature relating to diplomacy, and who made all too little attempt to inform themselves of proper usages after they reached their posts. Both drank to such excess that they were frequently indisposed for days at a time and even appeared at state functions in an inebriated condition—it may be added that one of them had the illusion that he was a bear during attendance at a presidential reception and shocked the hosts and other guests by parading around the presidential mansion on all fours. It is no wonder that our reputation in that country reached a very low level. It may be stated that these are extreme cases and that greater care has been taken in making diplomatic appointments to Latin America during the last few years. Another result of this system of appointment is that the turnover is ordinarily rapid, which also makes for lack of understanding, inept handling of important affairs, and an attitude of disrespect on the part of the officials of the foreign country to which a minister or ambassador is accredited. The Foreign Service Act of 1946 added a new category of career minister which does something to improve the situation.

In Defense of the System In defense of such a lack of professionalism, it is alleged by certain Washington officials that a fresh point of view is very valuable in important posts. These apologists insist that the career men develop certain prejudices and set ways that make it difficult for them to cut across red tape and accomplish far-reaching results. A successful industrial manager may know how, they say, to surmount all obstacles and arrive at his objective. It is probable that there is a certain amount of truth in these assertions, but they lose sight of the fact that the Foreign Office officials and the fellow diplomats with whom a minister or ambassador must work are ordinarily governed by a code of etiquette which makes the business manager seem out of place. The mere fact that straightforward tactics work wonders in American

business relations does not mean that the same methods will achieve substantial results in the diplomatic field. Nevertheless, it must be admitted that some of these inexperienced representatives of the United States have done well.[7] Furthermore, as long as the top pay for these posts is $25,000 plus allowances per year and the expenses of such places as London considerably exceed that amount, there is some reason for choosing men of affairs rather than career men.[8]

The Current Situation The current situation is not so bad as it might be, although it leaves a good deal to be desired. There has grown up a custom of appointing ambassadors and ministers out of the higher ranks of the career men. At times 75 or 80 per cent have been chosen from this group; again the proportion will sink to 50 or 60 per cent. But at any time during recent years a fairly large number of heads of missions have been former career men.

Ambassadors Distinguished from Ministers Ambassadors, it may be noted, differ from ministers primarily in rank. They represent the United States at the more important capitals of the world or the capitals of less importance, as in Latin America, in which the United States is especially interested. Recently ministers have also been assigned to assist ambassadors in certain major capitals. Ambassadors receive salaries up to $25,000 per year and take precedence over ministers at state functions. Ministers perform substantially the same functions as their ambassadorial colleagues, but they are paid somewhat lower salaries and enjoy less prestige.

The Strictly Career Service At present there are approximately fourteen hundred strictly career officers in the Foreign Service. These are assisted by several thousand clerks, typists, doormen, janitors, messengers, interpreters, and other functionaries, many of whom are nationals of the countries in which the career men are stationed. Since the diplomatic and consular functions are now both placed under the Foreign Service, the career officers carry double titles; thus a single person may hold rank as second secretary of legation and consul, third secretary of legation and viceconsul, first secretary of embassy and consul general. Usually, this does not mean that a single person will serve in both capacities at the same time, but it does indicate something of the flexibility

[7] This is particularly the case among those stationed in London and Paris.

[8] Ambassadors to the Court of St. James's ordinarily spend $50,000 to $75,000 per year. C. G. Dawes reported $75,000; John W. Davis $50,000 to $60,000.

which permits men to be shifted back and forth from one type of work to another. Since 1924 entry into the Foreign Service of the United States has normally been by competitive examination. These examinations, which include both written and oral sections, are scheduled once each year and are open only to those citizens between the ages of twenty-one and thirty-five who have made acceptable application to the Department of State.

Promotion There is a widespread misapprehension that promotion in the Foreign Service depends in large measure on private means, social poise, and political pull. In an interview, published in 1939, Mr. G. Howland Shaw, then Chief of the Division of Foreign Service Personnel of the Department of State, categorically denied that Foreign Service officers must have independent wealth, declaring, "It is more likely that his parents (Foreign Service officer's) are people of moderate means, or even poor, than wealthy. The majority of Foreign Service officers have no other incomes than their salaries and post allowances." [9] That is not to say that private means may not be convenient at times, but the common assumption that they are absolutely essential is not founded on fact. Social grace is, of course, not a liability in the foreign service, provided it is supplemented by intellectual vigor and reasonably faithful attention to duty.

Diplomatic Functions of Foreign Service Officers It is not easy to make a list of the duties of Foreign Service officers attached to legations or embassies of the United States. Much depends upon the particular job which they hold. More than that, a great deal depends upon the post to which an officer is assigned. Furthermore, the time element enters in, for during periods of world conflict duties may be more arduous and of a different character from those carried on during normal times. Finally, a great deal depends upon the individual Foreign Service officer, especially in the higher grades of the service. There are certain routine duties which must necessarily be performed, but beyond those the senior members of the Foreign Service have considerable leeway. They may spend a great deal of their time going through foreign government reports, reading the vernacular press, and in other ways collecting data for the preparation of elaborate reports on political, economic, and even social conditions in the country to which they

[9] See the *American Foreign Service Journal* for October, 1939.

are assigned. Or they may concentrate their attention on the cultivation of important government officials, professional men, business executives, and other leaders of the foreign capital. It should be noted that, with the addition of cultural, labor, and other attachés during recent years, activities are distinctly more numerous now than they were a few years ago.

Contact with Officials of Foreign Governments As representatives of the United States the Foreign Service officers handle American relations with the governments of the countries in which they are stationed. They may have contact with executive, administrative, or legislative officials of the governments, but their primary relations will be with the Foreign Office. To this office they deliver communications from the Department of State in Washington; with this office they discuss the desires and complaints of the United States and its citizens; and from this office they receive messages for transmission to the Department of State. Much of this work may be of a routine character, but during times of international crisis great importance may be attached to it. If a treaty is being negotiated through regular channels rather than by a special mission, the work of the Foreign Service officers may be especially demanding. If an international conference, such as that held in 1945 in Mexico City, takes place in the capital where they are stationed, there will be many additional duties. In addition to the formal contacts with their respective foreign offices, Foreign Service men are always expected to be looking around for information which may be valuable to the Department of State as a basis for its dealing with a foreign country. Consequently numerous reports by telephone, cable, or radio are made on current happenings, while more elaborate written reports are sent by diplomatic pouch.

Social Functions The social obligations may be quite burdensome or they may be relatively simple. In certain capitals of the world, Paris during the old days, London and Rome at times, social life among the diplomatic circle has been a hectic and complicated affair. Almost every day brought invitations to dinners, receptions, cocktail parties, and a hundred and one other social affairs. Even if many of these are not accepted, life may become one round of dinners, receptions, and parties which consume the greater part of every day and last until long after midnight. State functions and

the formal affairs of fellow-diplomats ordinarily require attendance even on the part of those who are not socially inclined.

Miscellaneous Diplomatic Duties In those capitals where American tourists and business men abound during normal times Foreign Service officers may have to give a considerable amount of energy to their entertainment and assistance. It is traditional that resident Americans be entertained at the legation or embassy on July the Fourth. Many American diplomatic stations also give entertainments at Thanksgiving and Christmas. Congressmen of the United States on junket always expect to be dined and wined by the legations and embassies of the United States, while many men of wealth or eminence in other walks of life also are insulted if they receive no attention. Ambitious mothers have long schemed to have the American ambassador in London present their daughters to the English king and queen. American business representatives abroad frequently find that they need the assistance of legation or embassy officials in securing special privileges or ironing out difficulties with the foreign government.

Consular Functions The Foreign Service officers who are attached to consulates of the United States have varied duties also, although they may not have quite the leeway which their diplomatic colleagues enjoy. A great deal depends upon where they are stationed. If the consulate is attached to a legation or an embassy, social obligations may be greater than they would be otherwise. Consulates located in large cities, such as Shanghai, Montreal, São Paulo, or Bombay, find themselves in the social picture to a far greater extent than those situated in Antofagasta, Port Saïd, or Santos. In general, Foreign Service officers assigned as consular officials deal with commercial matters more than their colleagues in the diplomatic side. But even commercial responsibilities depend in large measure upon the particular consulate—where much trade is carried on with the United States the work will be far heavier than in cities of the same size where little or no such trade originates or ends.

Examples of Consular Duties Where there is important exportation to the United States, consular officials have a good deal of routine work in connection with certifying invoices. If vessels flying the flag of the United States call in large numbers, there

will be many duties in connection with the signing on of sailors, the sending home of stranded seamen, disputes between master and crew, securing ship's stores, and clearances. If American missionaries or business men in large numbers are resident in a foreign city, there will probably be numerous duties relating to their passports, marriages, births, deaths, estates, rights, property holdings, taxes both American and foreign, and a multitude of other matters. In those countries where large numbers of persons wish to migrate to the United States, consuls may be faced with innumerable responsibilities relating to visas. One of the most important functions of Foreign Service officers assigned to consular duty is that of reporting on business opportunities in the areas which they cover. As pointed out before, in 1939 the President transferred the foreign agents of the Commerce and Agriculture departments to the Foreign Service and thus added to the responsibilities relating to the making of reports on industrial, agricultural, and other commercial matters. American business concerns have the privilege of asking whether or not their products would find a market in a foreign country. In addition to gathering such information, consular officials prepare general reports on foreign business conditions.[10]

A General Evaluation of the Foreign Service With a considerable variation among the several hundred Foreign Service officers as to competence, industry, and intelligence, it is not easy to draw general conclusions. No one can doubt the substantial progress which has been made since the Rogers Act placed the service on a career basis in 1924. Before that time there were numerous examples of able diplomatic and consular officials, but the over-all standards were low and the reputation of the United States in the field left a great deal to be desired. At the present time it seems unfortunate that ambassadors and ministers are placed above rather than at the top of the career service. For many years very inadequate provision was made for housing consulates, legations, and embassies and particularly their staffs. Despite the expenditure of some millions of dollars in acquiring suitable quarters, there is still much to be done.[11] Salaries compare favorably with those paid by

[10] These are compiled by the Department of Commerce and published reports are regularly issued.

[11] Large sums have been spent acquiring property in Ottawa, Berlin, Paris, and other capitals.

other countries, and allowances for entertainment and related items despite recent increases are usually below what they should be and cause many problems which produce irritation and embarrassment. The educational background of the Foreign Service officers is very good, at least as far as formal education is concerned; moreover, many of them are expert in their knowledge of international politics.

Lack of Specialization The policy of the State Department has been to transfer the personnel at frequent intervals—ordinarily at least once every three years—and this has prevented detailed specialization in the majority of cases. In the Far East some of the Foreign Service officers of the United States are permanently assigned to those countries and have acquired an impressive knowledge of the language, the institutions, and the people, but in the remainder of the service shifts from one side of the world to another are always in order. An officer may be assigned to Turkey, Portugal, Panama, Russia, and Canada in succession, in no case residing in a single country for longer than three years. As a result, he only becomes tolerably proficient in Turkish language and history when he has to start all over again in Portugal with a different language and set of customs. After several experiences of this kind he either becomes highly adaptable or falls by the wayside. In any case he is not likely to be too proficient in dealing with officials of the country to which he has been transferred—at least for a year or so. The spectacle of first secretaries and consul generals who cannot even make a telephone call, to say nothing of conversing with the foreign office staff without an interpreter, is not edifying.

Psychology Finally, there is the matter of Foreign Service psychology. The most serious weakness in the Foreign Service is probably a narrow attitude which places undue emphasis upon protocol and which views anything unconventional, however unimportant, as shocking. To a considerable extent this is probably a result of the training received and the diplomatic environment, but it may also be attributed in part to the selection policy of the service.

Background of Foreign Service Officers Of the 153 successful Foreign Service candidates during the years 1932 to 1940, 29 were drawn from New York, 15 from California, 12 from Massachusetts, and 10 from Pennsylvania, while 8 states did not contribute a single recruit, and Wisconsin, Indiana, Nebraska, and sev-

eral other states could claim only 1. This may not be out of order, but it perhaps adds to the conclusion to be drawn from the educational background of the personnel. As of 1940, 93 of the 850 Foreign Service officers came from Harvard, 62 from Yale, and 56 from Princeton; approximately one half were drawn from 12 universities, 8 of which were located in the East.[12] On the other hand, only one lone officer had been educated in the more than thirty institutions of higher education in Indiana—and that through no lack of interest on the part of the students of those universities. The British Foreign Service, which has perhaps had the best reputation in the world, has been criticized severely because it has drawn its personnel from too narrow a social stratum, with Oxford and Cambridge men enjoying great advantage.[13] In view of the educational record noted above, one wonders whether the same narrowness has not in some instances characterized the Foreign Service of the United States. Since 1942, it is only fair to note, a considerable broadening has taken place.

Selected Bibliography

Bailey, T. A., *A Diplomatic History of the American People,* F. S. Crofts & Company, New York, 1940.

Bartlett, R. J., ed., *Record of American Diplomacy,* Alfred A. Knopf, New York, 1947.

Beckett, Grace, *The Reciprocal Trade Agreements Program,* Columbia University Press, New York, 1941.

Chamberlain, L. H., and R. C. Snyder, *American Foreign Policy,* Rinehart & Company, Inc., New York, 1948.

Childs, J. R., *The American Foreign Service,* Henry Holt & Company, New York, 1948.

Fleming, D. F., *The United States and World Organization,* Columbia University Press, New York, 1938.

Gibson, Hugh, *The Road to Foreign Policy,* Doubleday, Doran & Company, Garden City, 1944.

[12] To be exact, 407 out of 850. Taken from the *American Foreign Service Journal* for June, 1940.

[13] The British took official cognizance of this situation in 1941 when Anthony Eden, the Foreign Secretary, announced a new system of recruitment under which opportunities would be given to other classes of the population. See the files of the *New York Times* for June, 1941, for additional details.

Hulen, B. D., *Inside the Department of State*, Whittlesey House (McGraw-Hill Book Company), New York, 1939.

Hull, Cordell, *Memoirs*, 2 vols., The Macmillan Company, New York, 1948.

Johnson, Walter, *The Battle Against Isolation*, University of Chicago Press, Chicago, 1944.

Jones, J. M., *A Modern Foreign Policy for the United States*, The Macmillan Company, New York, 1943.

Kirk, Grayson, *The Monroe Doctrine Today*, Farrar & Rinehart, New York, 1941.

Larkin, J. D., *Trade Agreements*, Columbia University Press, New York, 1940.

Latané, J. H., and D. W. Wainhouse, *A History of American Foreign Policy, 1776-1940*, Doubleday, Doran & Company, New York, 1941.

Lay, T., *The Foreign Service of the United States*, Prentice-Hall, New York, 1925.

McClure, W. M., *International Executive Agreements*, Columbia University Press, New York, 1941.

Perkins, Dexter, *Hands Off; A History of the Monroe Doctrine*, Little, Brown & Company, Boston, 1941.

Sands, W. F., and Lalley, J. M., *Our Jungle Diplomacy*, University of North Carolina Press, Chapel Hill, 1944.

Sears, L. M., *A History of American Foreign Relations*, rev. ed., The Thomas Y. Crowell Company, New York, 1938.

Shepardson, W. H., and W. O. Scroggs, *The United States in World Affairs*, Harper & Brothers, New York, published annually.

Stuart, Graham, *American Diplomatic and Consular Practice*, D. Appleton-Century Company, New York, 1936.

Upgren, A. R., *Reciprocal Trade Agreements*, University of Minnesota Press, Minneapolis, 1937.

Van Alstyne, R. W., *American Diplomacy in Action*, Stanford University Press, Stanford University, 1944.

Warburg, J. P., *The Isolationist Illusion and World Peace*, Farrar & Rinehart, New York, 1941.

——, *Foreign Policy Begins at Home*, Harcourt, Brace & Company, New York, 1944.

Wilson, H. R., *Diplomacy as a Career*, Riverside Press, Cambridge, 1941.

28 · *National Defense*

The delegates who met in Philadelphia in 1787 to consider the strengthening of the government of the Confederation gave generous attention to the matter of national defense. Though the regulation of commerce received a single clause of the Constitution and credit facilities came in for no attention at all, the framers took pains to include nine different provisions which dealt with national defense. It required little argument to show that the individual states were in no position to deal effectively with this matter and consequently this particular area was placed more or less exclusively in the hands of the national government. Furthermore, in order that every opportunity might be given, the hands of the latter government were left relatively unfettered in dealing with the problem.

Scope of the National Defense Powers As commander in chief of the armed forces and as the recipient of power entrusted by Congress under the Constitution the President has far-reaching authority in matters relating to national defense. He may order the regular Army and Navy to take action which he regards as wise, though this may involve the United States in war. Even if Congress has the purse in hand, the President may virtually compel the disbursement of large sums for military purposes. In so far as labor interferes with the defense program, the chief executive may take over control by sending in the soldiers. If management refuses to co-operate in national defense plans, the President may also occupy property. The transportation facilities of the country may be taken over by the President on the plea that the military forces and supplies have to be moved.[1] Transactions in foreign exchange may be prohibited and assets of foreign countries in the United States may be frozen. Radio stations may be refused the air; a system of censorship may be established; national securities exchanges may be temporarily closed; the eight-hour day can be abandoned

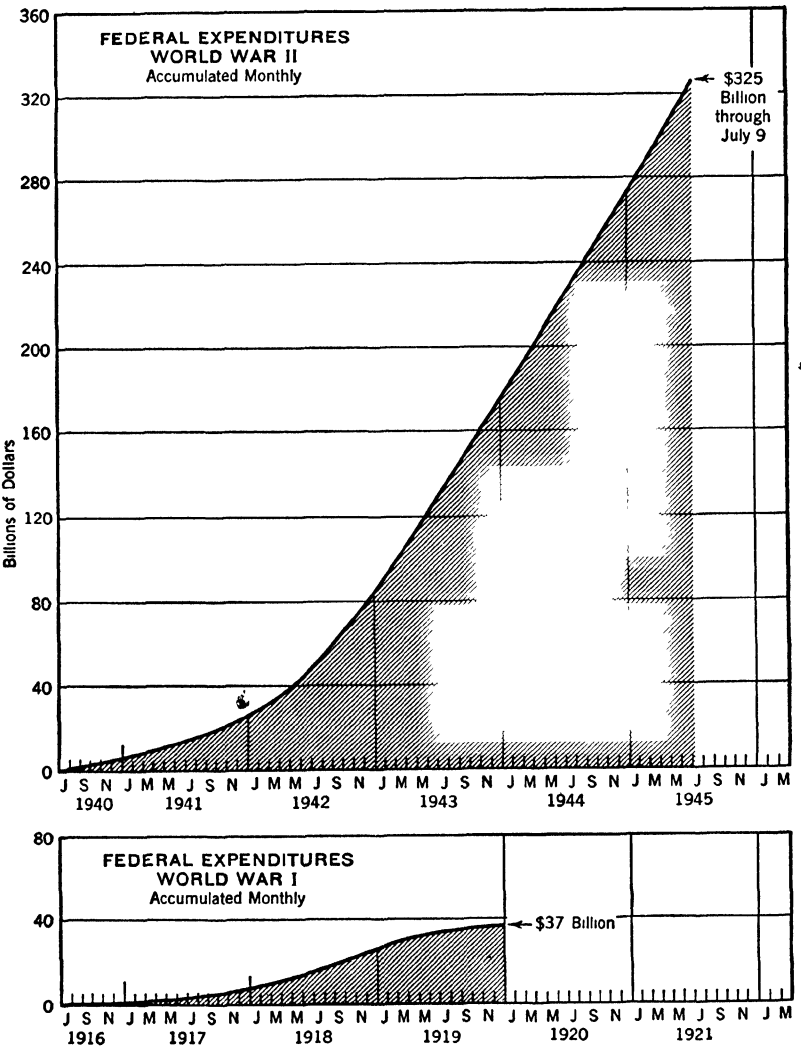
[1] This was done in World War I.

in favor of a longer day in plants where government contracts are being manufactured. These are but a few of the steps which may be taken if the welfare of the country during a period of national emergency demands. That is not to say that they will necessarily be taken; but the President may go far in dealing with a situation if he deems it prudent and necessary to do so. The national defense powers of the United States may not be as extensive as those in a dictatorship—certainly they are used with greater discretion—but they are nevertheless far-reaching.[2]

The Defense Record of the United States Despite the attention given to national defense by the Constitution, the United States has in general not actually devoted any large part of its energy to military activities. The early years of the republic saw reasonably vigorous efforts to cope with some of the warlike Indian tribes. In 1812-1815 there came the second war with England; while during the years 1846-1848 the United States carried on military operations against Mexico. In 1861 there began four years of the bloodiest war which the United States has ever engaged in and which left its mark on some sections of the country for more than half a century. At the close of the century a brief war with Spain ended with the Philippines and Puerto Rico in our hands. Then came World War I in 1917, which required the expenditure of great sums of money but did not involve the loss of large numbers of our men. And most recently there has been World War II. The recital of these wars within a space of a century and a half does not perhaps uphold the statement that the United States has not given undue attention to warlike activities. But over against these historical events may be placed the general antipathy for military dominance. Even the War and Navy departments have been headed by civilians rather than Army and Navy officers. Military training has been generally distasteful, and except during World Wars I and II has rarely been of compulsory character. Military preparations have, with rare exceptions, been regarded as necessary evils, not something to be glorified; perhaps in no other country of major importance has it been possible to travel into

[2] In December, 1941, after the outbreak of war Congress conferred on the President broad wartime powers even exceeding those granted to Woodrow Wilson in World War I. These were supplemented by a second War Powers Act passed in 1942.

every nook and cranny without interference by the military and indeed without even so much as seeing military forces and activities.



Treasury Department.

Declaration of War The Constitution confers on Congress the power "to declare war, grant letters of marque and reprisal,

and make rules concerning captures on land and water." [3] Declaration of war is accomplished by a joint resolution which is then submitted to the President for signing and announcement. In the Spanish-American War hostilities were begun before a declaration and in the Civil War no declaration at all was made because of the domestic character of the conflict. However, in general the United States has observed the approved etiquette in a reasonably careful manner. The President as commander in chief of the armed forces might, of course, plunge the country into warfare by sending the military into another country. But Presidents have been disposed to exercise that power with due care.

COORDINATION OF THE ARMED FORCES

The report of the Roberts Committee shocked the people of the United States almost as much as the attack on Pearl Harbor itself, for it indicated beyond a doubt that there had been a lack of collaboration on the part of the Army and the Navy in Hawaii. The early experience in the war led to distinct improvement. The Joint Chiefs of Staff [4] were organized into an agency which played an important role in co-ordinating the over-all military activities in which the United States participated. This was done not only by adopting policies and plans which would provide the most effective use of all of the fighting forces but by integrating the Army and the Navy more or less under a single command in foreign theaters. Thus a Navy admiral might be placed in general charge of all operations in a given area, both land and sea, while in another area both the forces of the Navy and the Army might be commanded by an Army general. Nevertheless, the problem remained an acute one in the opinion of many experts. Following World War II the President strongly urged combining the War and Navy departments into a single Department of National Defense. After long consideration and many compromises Congress finally, in 1947, provided for the creation of a National Military Establishment to co-ordinate though not to merge the services.

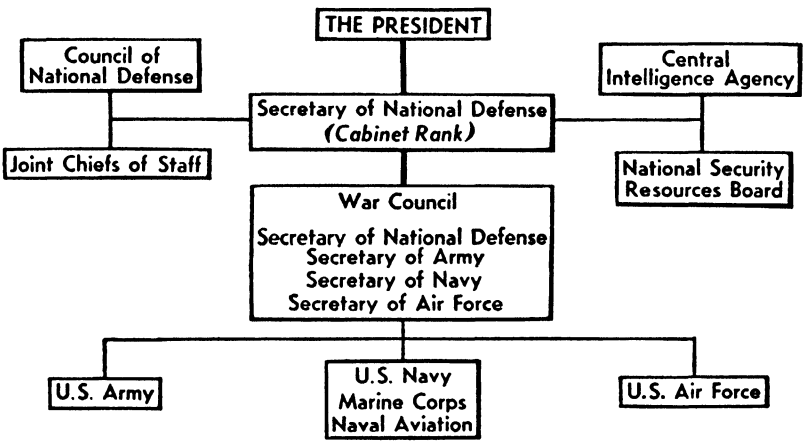
[3] Art. I, sec. 8.

[4] The Joint Chiefs of Staffs are as follows: the President's Chief of Staff, the Army Chief of Staff, the Chief of Naval Operations, and the Chief of Staff of the Air Forces.

NATIONAL MILITARY ESTABLISHMENT

The National Military Establishment is set up as one of the nine major administrative departments of the government with a secretary who holds a seat in the cabinet. Its constituent parts are as follows: Department of the Army, Department of the Navy, and Department of the Air Force. Each of these has a secretary at its head, but these secretaries do not enjoy cabinet rank and are re-

PLAN FOR UNIFICATION OF ARMED FORCES



sponsible in general to the secretary of Defense. A National Security Council, made up of the heads of the three service departments and presided over by the President, is provided to consider problems pertaining to national defense and to make recommendations thereon. Under this council is placed the Central Intelligence Agency. A National Security Resources Board is responsible for drafting plans for industrial and civilian mobilization. Another important part of the National Military Establishment is a War Council to advise on matters of broad policy. The Joint Chiefs of Staff are retained to accomplish administrative co-ordination in the use of the three forces. A Munitions Board is charged with co-ordinating industrial plans and research.

THE ARMY AND THE AIR FORCE

The Regular Army The United States has long maintained a standing army of professional character under the constitutional authorization "to raise and support armies, but no appropriation of money to that use shall be for a longer time than two years." [5] Immediately prior to the beginning of hostilities in Europe in 1939 the total strength of the men and officers of the professional Army of the United States amounted to about one hundred and fifty thousand. A Regular Army and Air Force approximating one million was planned for the postwar period, but the international situation in 1948 led to additions.

Reserve Officers While professional military service has failed to attract large numbers of young men, considerable interest has been manifested in reserve commissions. College students have become members of R.O.T.C. units and after supplementary summer training have received reserve commissions as second lieutenants. Entrance to the Quartermaster, Intelligence, and other services has been opened to those who would carry on a correspondence course and pass certain examinations. Especial emphasis has been placed on maintaining an adequate supply of reserve officers since the end of World War I, for in that conflict the lack of trained officers badly handicapped the United States in building up an army. There were prior to Pearl Harbor almost seventy-five thousand reserve officers, while following World War II more than 200,000 officers held reserve commissions. In ordinary times these men follow the professions or are engaged in business activities, but when the need arises they may be called into active service.

National Guard In order to give the states some place in the defense program it has long been the practice to supplement the Regular Army with National Guard units scattered throughout the forty-eight states. Every male citizen between the ages of eighteen and forty-five years is technically a member of the national militia, but only a comparatively small proportion of these millions have been organized into National Guards. The states provide armories, appoint officers, maintain adjutant generals for general supervision, and have the control during peace times. However, the expenses are borne in large part by the national

[5] Art. I, sec. 8.

government, which in return asks the right to specify equipment and determine training. When the occasion demands, the President of the United States may call the National Guard out for active service and the control on the part of the states then gives way for the time being. There were 245,000 National Guardsmen at the outbreak of World War II. Current plans call for a National Guard of 750,000.

Selective Service The international situation became so tense in 1940 that President Roosevelt called upon Congress to pass legislation which would require compulsory military service on the part of large numbers of young men. The tradition of freedom from that sort of service made Congress reluctant to pass the necessary legislation, but the exigencies of the situation did not permit any other course. All male citizens between the ages of twenty-one and thirty-five years were called upon to register in the fall of 1940. After the entry of the United States into the war, the Selective Service Act was amended to include all males between the ages of eighteen and sixty-four, inclusive, with those of twenty to forty-four, inclusive, subject to active military service.[6] Master numbers drawn by lot in Washington determined the order in which these men would be called up. Local selective service boards were set up on county levels in rural areas and on districts within large cities for the purpose of supervising the system and determining cases of deferment. During World War II virtually all of the more than eight million men in the Army and most of the three million in the Navy were selective service products. The international situation in 1948 necessitated the revival of selective service on a limited scale.

The Army of the United States During wartime the Regular Army, the Reserve officers and men, the National Guard, and the selective service men together form what is known as the Army of the United States. This necessarily varies in size, depending upon the exigencies of the particular time and the exact stage which has been reached in transferring from a peacetime to a wartime footing. At the peak during the first part of 1945 a force

[6] The Bureau of the Census estimated 25,820,788 men to be affected by the twenty to forty-four provision and 42,001,041 by the eighteen to sixty-four provision.

of more than eight million men and women constituted the Army of the United States.

Organization of the Army and Air Force The President is commander in chief of the armed forces in a legal sense, but he does not ordinarily actively exercise his prerogative. To begin with, he is rarely a professional soldier,[7] furthermore, he has too many other burdens to be able to give his detailed attention to the armed forces. The Secretaries of the Army and the Air Force, like the President, do not have a military background as a rule, and are somewhat more the liaison men between the Army and the Air Force and the President and Congress than their heads. The general staff has the direct oversight of the Army, and its head, the Chief of Staff, is ordinarily the ranking Army officer in the United States. A corresponding provision is made in the Air Force.

THE NAVY

The Constitution authorizes Congress to "provide and maintain a navy," [8] omitting the qualifying clause noted in the case of the Army that appropriations shall not cover more than a two-year period. Naval construction requires a longer time than most of the projects carried on by the Army and this perhaps explains the unlimited authority given in this field. Prior to 1939 the United States had slightly over 100,000 officers and men in the Navy; by mid-1941 the total had jumped to 249,727. After the declaration of war naval personnel was rapidly increased, first by volunteers and later by selective service inductees, until it totaled approximately three million. Various types of naval craft are operated by the Navy: first-line battleships, heavy and light cruisers, destroyers, airplane carriers, submarines, landing vessels of various types, patrol ships, and numerous auxiliary craft such as supply ships, hospital ships, tenders, tankers, and repair ships. Some 1,500 war vessels of various types and approximately 100,000 auxiliary ships and nonfighting craft were being operated by the Navy at the end of World War II. A postwar Navy of approximately half a million officers and men is planned.

[7] Presidents Washington, Grant, and perhaps Theodore Roosevelt might be classified as possessing professional military knowledge.
[8] Art. I, sec. 8.

The Marine Corps The Marine Corps, which expanded from 26,454 officers and men in 1940 to half a million after the declaration of war, has been publicized by the moving pictures, popular fiction, and the press until it ranks along with the old French Foreign Legion on the score of daring and romance. Perhaps the very color and cut of its dress uniforms has done much to entrench it in popular imagination. But this corps is far more than a moving-picture creation, for it has a long record of effective service behind it. Organized as a branch of the Navy its members might be designated the amphibians of the armed forces, since they are trained to function both on land and on sea. A Marine Corps of approximately 100,000 is planned for the postwar period.

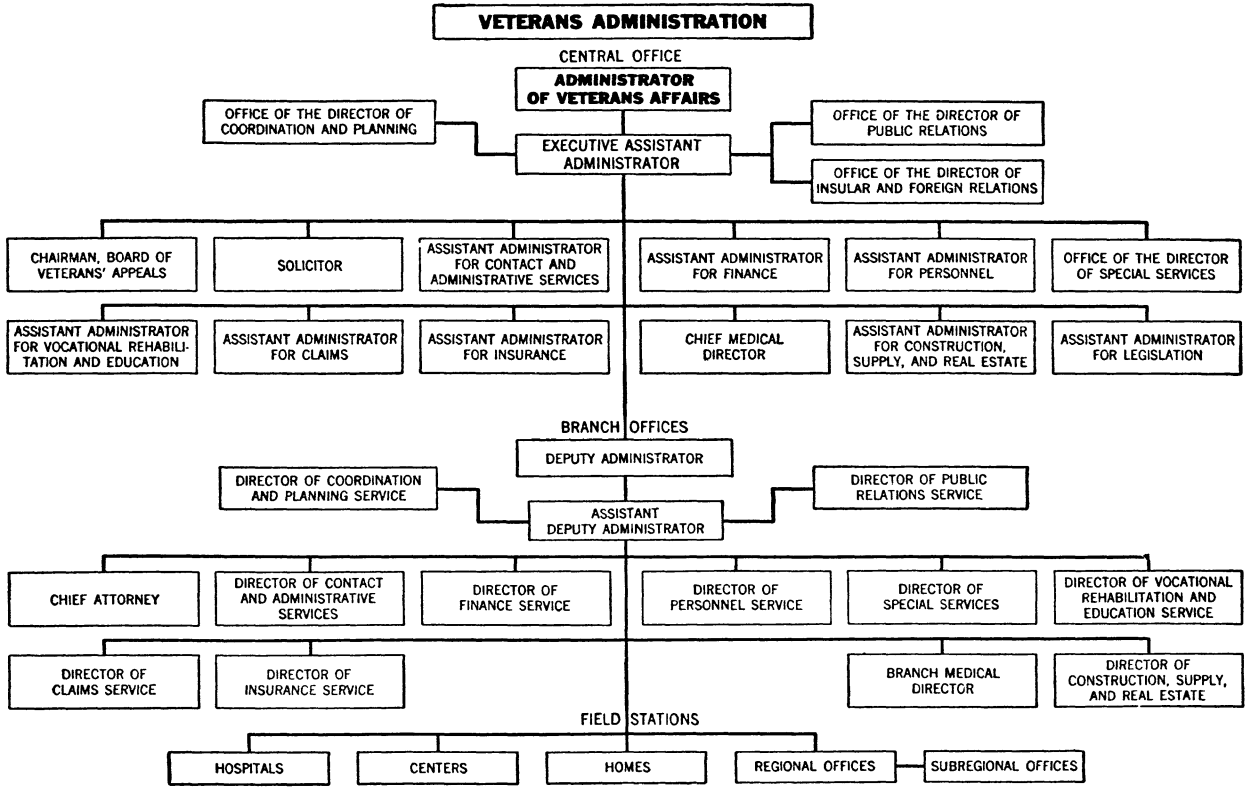
CURRENT MILITARY PROBLEMS

Universal National Training Long before the end of the war a great debate had begun as to whether the United States should embark on a system of national training for all young men as a peacetime measure. Some of the discussion ranged about how long such training should last and whether it should be military in character or educational. Military people as well as many others argued for a distinctly military type of training, aimed at keeping the United States well prepared for any future war. But the biggest controversy was whether there should be such a training period at all. Public opinion polls purported to show that the majority of the people favored some sort of compulsory training, while various patriotic organizations stood squarely in support of the necessary legislation. On the other side, there were to be found the churches in large measure, the educational associations, and many individuals who questioned the value of military training in developing a strong manhood.

Control of Atomic Energy The development of atomic energy has given rise to many problems of far-reaching character. Though the application of atomic energy may prove to be of greatest value in the industrial and medical fields, its military potential is such that its control has been considered a major problem in the period following World War II. The United States has stated that it is willing to have an international agency exercise such control under proper safeguards, but until such an international con-

trol can be set up, provision has had to be made for American action. Though the armed forces have a great stake in atomic energy, it was decided by Congress after World War II that a civilian agency for the control of the plants, laboratories, and stockpile of atomic materials would be most suitable. Steps were therefore taken for the creation of an Atomic Energy Commission, with a chairman and four members to be appointed by the President with the consent of the Senate. Of course, this agency works very closely with the National Military Establishment.

Care of the Veterans The mobilization of a military establishment exceeding eleven million officers and men involves many difficult problems, as the war years indicated. Then when the fighting is over, there is the hardly less complicated task of demobilizing the millions who must be returned to civilian status. Hundreds of thousands of casualties have resulted from the war and many of these require hospitalization, rehabilitation, convalescent facilities, and other types of treatment. Disabled veterans may have to be paid pensions for the remainder of their lives; others may require training to enable them to fill positions suitable for the partially disabled; still others expect assistance of one kind and another which will enable them to readjust to normal existence. The Veterans Administration has been created by Congress to carry out most of the program after the Army and the Navy have discharged veterans from active service. This agency is in charge of the insurance system set up to cover those who served in the armed forces; it also administers the G.I. Bill of Rights which provides for various benefits, such as financing of educational training and assistance in financing the purchase of businesses or farms and the building of homes. The greatly increased scope of the work of the Veterans Administration growing out of World War II led, in 1945, to its reorganization, which in addition to enlarged personnel and more elaborate facilities provided some degree of decentralization so that most cases could be handled by regional representatives without the delay and complications of reference to Washington. The care of veterans is likely to remain in the limelight for many years, both because of the necessity of caring for large numbers of casualties and the insistent demands of the rank and file of the veterans for various benefits.



U.S. Government Manual.

MILITARY AND MARTIAL LAW AND MILITARY GOVERNMENT

Military Law The Constitution authorizes Congress to "make rules for the government and regulation of the land and naval forces" [9] and this Congress has done in the form of military law.[10] Members of the armed forces are not immune from civil rules and regulations when they are away from military reservations, but their general conduct is regulated by a special type of law which is enforced by military police and courts-martial. Minor infractions of the provisions of military law are punished by various penalties, including imprisonment in a guardhouse, loss of privileges, and deduction from pay for a stated period. More serious offenders may be sent to military prison or in extreme cases condemned to death. The three armed services have legal branches headed by judge advocates general and manned by professional lawyers. Under the supervision of these services, courts-martials are set up to pass on offenses which are committed by members of these respective groups. It should be noted that military law applies primarily to members of the armed forces, though civilians serving with the forces may come under certain provisions.

Martial Law Somewhat similar to military law in its general spirit, but quite different in scope, is another type of law known as "martial law." [11] If war operations, labor troubles, or natural catastrophes such as earthquakes or floods carry in their wake difficulties that the regular civil authorities are not able to cope with, martial law is sometimes proclaimed. As far as the national government is concerned, martial law is a rare thing, since most of the events which would lead to its proclamation are local in character and hence call for action by the governor of a state rather than by the President or Congress of the United States. Only in cases of serious internal disorder, invasion, or actual war is martial law authorized by the Constitution and then it is not intended that it apply beyond those areas immediately affected. Martial law was proclaimed in Honolulu and Manila in December, 1941.

[9] Art. I, sec. 8.

[10] For additional discussion, see John H. Wigmore, *Source Book of Military Law and War Time Legislation*, West Publishing Company, St. Paul, 1918.

[11] Much additional information in regard to martial law is available in Charles Fairman, *The Law of Martial Rule*, Callaghan & Company, Chicago, 1930.

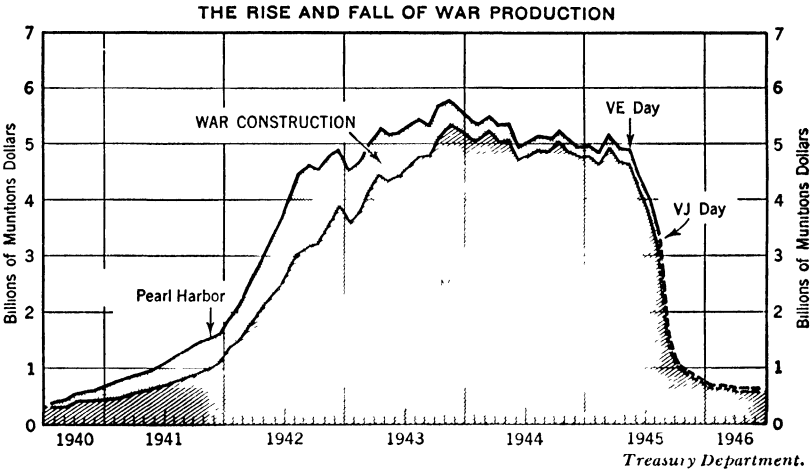
When a proclamation of martial law has been made, the ordinary civil authorities and laws are at once subordinate to the military authorities designated by the President or Congress, though they may not be supplanted entirely. The rules of martial law apply to all civilians within an area designated and may also affect military personnel. Unlike ordinary law or military law, martial law is not an established system, since it depends upon the judgment of the military officer named to administer it. In other words, the rules of martial law may vary from place to place and from time to time; even within a single area under martial law it is possible to have changes made from day to day at the discretion of the officer in charge. Martial law is supposed to be drafted in such a manner as to fit the local needs and hence if the situation calls for drastic control the rules may be very harsh indeed, even to shooting on sight at night within forbidden areas. Martial law, as proclaimed by the national government, does not carry with it the suspension of the writ of habeas corpus unless actual military operations in the vicinity require this extreme step.[12]

Military Government A third term which until recently was in much less common use than the first two is "Military Government." Though directly related to the successful operation of the armed forces, it is not to be confused with military law. Military government carries the responsibility for the civil administration of foreign territory which is occupied by the Army or the Navy. The immediate purpose of military government is to assist in the prosecution of war by relieving the tactical forces of many problems which have to be handled and which in the past have frequently seriously vitiated the vigor of military operations. After the fighting has ended, military government then proceeds to its secondary purpose, which is the control of the area until some permanent provision has been made to return it to a foreign government or it is set up under a civil administration. In general, it is a basic principle of military government that the existing governmental system and laws will be used as far as is consonant with military necessity and the policies of our government.

[12] This was clearly stated by the Supreme Court in *Ex parte Milligan*, 4 Wallace 2 (1866). Nor does it permit the trial of civilians by military tribunals simply because a war is going on, according to an important Supreme Court pronouncement in 1946 relating to Honolulu.

MOBILIZATION AND RECONVERSION

Importance of Supplies Modern warfare involves the use of enormous quantities of supplies. Airplanes, tanks, guns, trucks, ships, and many other items are required not only in numbers that a few years ago would have seemed incredible but in many types. Airplanes are not effective unless bombs are available in almost infinite numbers; submarines must have torpedoes; mechanical equipment has to have billions of gallons of gasoline; while the staggering array of machine guns, cannon, antiaircraft guns, naval armament, and coastal defenses necessitates the production of thousands of



tons of powder and projectiles. All of this means that a country which expects to defeat its enemies must organize its industrial system in such a fashion that huge quantities of war supplies and equipment are constantly at hand. No number of men, no courage, no set of plans will be able in this day and age to withstand the combined assault of airplanes, *panzer* divisions, and naval craft unless they are supported by similar facilities. By 1944 well over half of the greatly expanded industrial capacity of the United States was being dedicated to turning out military supplies.

Direct Activities of the Government The national government maintains a number of arsenals and navy yards which manu-

facture ordnance and naval supplies, and even build ships; the latter are also equipped to handle the repairs which have to be made on the vessels which constitute not only our Navy but that of our allies. During peace times a considerable part of the munitions and some of the warships can be supplied by these government-owned and -operated plants. However, during a national emergency they become scarcely more than a drop in the bucket, so to speak, in meeting the requirements.

Office of Emergency Management As early as May 25, 1940, F. D. Roosevelt set up in the Executive Office of the President an Office for Emergency Management to have general oversight over the national defense program. The Office for Production Management, the War Production Board, the Office of Price Administration, and many other agencies were placed within this office as they were created to deal with various aspects of the defense program. The special assistant to the President in matters relating to national defense was attached to the O.E.M. in order to keep the chief executive informed of what was being done.

Office of Production Management During normal times the Army, Navy, Maritime Commission, and other agencies purchase their munitions through direct negotiation and contract with the manufacturers or distributors. However, in a period of national emergency the demand is so great that this system is not adequate. In order to meet the exigency President Roosevelt created the Office of Production Management by executive order in January, 1941. The general purpose of the O.P.M. was to "convert the nation's industrial processes into a military economy." The O.P.M. had at its head a general director and an associate director-general who was head of the labor division; it also had a director of priorities, a director of production, and a director of purchases. The internal organization changed almost from day to day as new problems arose, but for a considerable period twenty-odd commodity branches, devoting themselves to rubber, chemicals, ordnance, and so forth, did the basic work. Various committees of business men, labor representatives, and men of affairs acted in advisory capacities to the O.P.M. All major contracts relating to defense had to pass through this agency before they could be signed by the Army and the Navy and this served to gather all of the important pur-

chasing in a single office, thus co-ordinating the total efforts and minimizing the bidding of one department against another.

The War Production Board The general weakness and divided authority of the O.P.M. were strikingly pointed out by a senatorial committee early in 1942. This committee noted that the Office of Production Management had been more or less of a rubber stamp for the War and Navy departments, while in dealing with industry it had followed the tactics of a debating society. Moreover, it had ignored the crying need of converting the automobile factories into producers of munitions. On January 16, 1942, President Roosevelt finally issued an executive order which provided for a War Production Board within the Office for Emergency Management.

Organization of W.P.B. Members of the War Production Board except for the chairman were *ex-officio* in character and included the following: the Secretaries of War, Navy, and Commerce, the chairman of the Board of Economic Warfare, the administrator of the Office of Price Administration, and the special assistant to the President supervising the national defense program. Six major divisions were shortly established to deal with purchases, production, materials, industry operations, labor, and civilian supply. The War Production Board was liquidated by the President in the fall of 1945 and a Civilian Production Administration, somewhat similar in organization, was created to handle reconversion problems in the difficult period immediately following the cessation of fighting.

Price Control One of the problems incident to national defense activity is almost always that of rapidly increasing prices. Higher prices force the government to pay larger amounts for its munitions, encourage labor disputes arising out of demands for increased wages to meet higher living costs, and affect the general morale of the large number of people who have fixed incomes. In April, 1941, the President recognized this problem by creating an Office of Price Administration and Civilian Supply in the Office of Emergency Management. Conflicts between the O.P.A.C.S. and the O.P.M. relating to curtailing automobile production led to a reorganization in August, 1941. The Office of Price Administration was left to give its attention to prices, while civilian supply

was placed under the O.P.M. Through the pressure of public opinion, the threat of unfavorable priority ratings, and the big stick of government contracts, the O.P.A. managed to prevent some price increases, but it did not have direct authority to fix prices. Finally, late in January, 1942, Congress, after long-drawn-out deliberations on the part of conference committees, passed a price-control act which authorized the President to appoint a single administrator to carry out its provisions. President Roosevelt at once gave the new responsibility to the already existing Office of Price Administration. Though the law conferred no authority over salaries and wages, it did apply to rents as well as to general commodity prices. In the case of farm products the act specifically ordered that no ceilings be set which would represent less than 10 per cent of parity prices, the level of farm prices during 1909-1914, and then only with the consent of the Secretary of Agriculture.

Rationing Although the Emergency Price Control Act of 1942 had nothing to say about rationing, the Office of Price Administration gave a considerable amount of attention to such a necessity as a result of authority delegated to it by the War Production Board. The W.P.B. itself handled rationing to munitions establishments through priorities, but in addition there was the complicated problem of rationing civilian supplies. As the war effort demanded more and more in the way of supplies, rationing was extended to include such commodities as tires, automobiles, meat, dairy products, sugar, canned goods, shoes, and gasoline.

The Economic Warfare Board Late in July, 1941, Mr. Roosevelt felt that the time had arrived to create another defense agency of considerable importance. The Economic Warfare Board, headed by Vice-President Wallace, included in its membership the secretaries of State, War, Navy, Treasury, Commerce, and Agriculture and the Attorney General. Though primarily intended to deal with international aspects of the defense program, the Economic Warfare Board was also given instructions to plan for the postwar economy. Such matters as advising the President on economic measures essential to national defense, co-ordinating the efforts of the several departments interested in economic defense, transactions in foreign exchange, international investments and extension of credit, control of foreign-owned property, international

aspects of patents, international shipping and communications, and acquisition of materials from foreign countries were entrusted to this board. In 1943 a reorganization consolidated this agency with several others into the Foreign Economic Administration.

The Lend-Lease Administrator On the ground that one of the best ways to defend American interests would be to give aid to those countries already in active warfare with the totalitarian countries, the President recommended legislation authorizing the lending and the leasing of equipment and war supplies. By the summer of 1945 when lend-lease came to an end some forty-two billion dollars had been expended for this purpose. A Lend-lease Administrator was authorized to negotiate with the countries which it was desired to aid and to facilitate the carrying out of the agreements reached with these countries. Great Britain and the U.S.S.R. were the chief beneficiaries of this program, but China and the Latin-American countries also came in for substantial assistance. Planes, water craft, guns, medical supplies, food, and clothing were among the items which were furnished in quantities.

Foreign Economic Administration By 1943 the economic aspects of the war had become so important that it was adjudged wise to create a Foreign Economic Administration to unify and consolidate governmental programs relating to foreign countries. The Office of Lend-lease Administration, the Office of Economic Warfare, the Export-Import Bank,[13] the foreign procurement activities of the War Food Administration and the Commodities Credit Corporation,[14] and the Rubber Development Corporation were transferred to this new agency. The program of the Foreign Economic Administration, based on the existing far-flung operations of the agencies assigned to it, attained large proportions. The F.E.A. was liquidated in the fall of 1945, and its remaining functions were assigned to other agencies, such as the State and Commerce departments.

War Manpower Commission As the mobilization progressed, it became apparent that one of the most important problems involved the labor supply. In the thirties, when unemployment figures reached well beyond ten million, it hardly seemed probable that the United States would ever be in a position where labor

[13] See Chap. 23.
[14] See Chap. 25.

shortages would be acute. But the demands of the Army and the Navy, coupled with the huge requirements of industry, revealed a critical labor shortage. The War Manpower Commission was established by executive order in 1942 to deal with this problem. While it received fairly adequate authority to classify occupational employment as essential or nonessential, it did not have the full control over manpower which many considered desirable, largely because organized labor was very reluctant to have such power exercised. Various training programs were organized to provide certain skills especially needed; areas were classified as "critical" from a labor standpoint so that additional defense contracts would not be awarded unless an emergency required it; and an attempt was made to move surplus workers in an area to near-by places where they were needed. The United States Employment Service [15] with its numerous local offices was placed under the War Manpower Commission and handled many million placements. The War Manpower Commission was incorporated in the Department of Labor in 1945.

War Food Administration The experience of the war in so far as food was concerned resembled that of labor; in both cases a glut changed rapidly into an acute shortage. The War Food Administration was set up in 1943 to take vigorous steps toward meeting the demands of the armed forces, the civil population, and our allies for adequate food supplies. Unlike some of the war agencies which were largely divorced from civil departments handling similar problems, the War Food Administration became more or less integrated into the Department of Agriculture where it dominated the production and distribution machinery during the war years.[16]

Office of Defense Transportation Almost immediately after Pearl Harbor it became apparent that domestic transportation facilities would play a very important role in the prosecution of war. The Office of Defense Transportation was set up in 1941 to "assure maximum utilization of the domestic transportation facilities of the Nation," including railroad, motor, inland waterway, pipeline, air transport, and coastal and intercoastal shipping lines. This

[15] See Chap. 26.

[16] This agency was abolished in 1945; its functions still to be performed were absorbed by the Department of Agriculture.

office ordered services discontinued where the traffic did not justify trains and buses; it sought to discourage conventions and other mass movements of people. Many rules aimed at full use of all available transportation in the freight and passenger fields were issued.

Office of Civilian Defense In May, 1941, the President issued an executive order which provided for an Office of Civilian Defense. The announced purposes of this agency were to co-ordinate civilian defense efforts with military plans, prevent undue disruption of local community life by defense activities, and promote civilian morale. As it became apparent that bombing by the Germans was not probable, some of its activities were dropped. However, the program of morale-building, auxiliary fire protection, and volunteer community service was continued until the O.C.D. was dissolved by the President in 1945.

Office of Strategic Services Early in the war it became apparent that the United States had neglected its intelligence activities and consequently lacked information of vital importance. The regular military intelligence agencies were expanded immediately, but it seemed to the President that a new agency might wisely be provided to supplement their work. The Office of Strategic Services came into being and embarked on an ambitious program of gathering intelligence through agents in the field, through research and analysis projects, and by other means. Much of its work naturally received little publicity during the war, but subsequent reports show that it did important and daring work in many parts of the world. Proposals looking toward the permanent maintenance of the O.S.S. received considerable prominence in 1945, but the President finally decided to order its dissolution.

War Shipping Administration Supplies are not worth very much to a war effort unless they can be delivered and that undertaking in the case of a war fought in virtually every corner of the world requires an enormous quantity of shipping. The United States entered the war very poorly prepared to supply its forces abroad or indeed to transport its military personnel to foreign soil. In order to expedite the matter as much as possible the President saw fit early in 1942 to set up a War Shipping Administration to procure, operate, maintain, and repair the ocean-going vessels under the flag or control of the United States except those of the Navy,

Coast Guard, and Army and those engaged in the coastwise or intercoastal trade under the Office of Defense Transportation. The War Shipping Administration in large measure displaced the United States Maritime Commission [17] during the war years, taking over its vessels, much of its personnel, and many of its records. Many millions of tons of new Liberty and Victory ships were constructed under the authority of the War Shipping Administration. The net result was that the supplying of the armed forces was handled in a manner which contributed very substantially to the very important logistical side of the war. With the United States holding title to more than half of the tonnage of the world at the end of the war, a major problem involved the disposal of large numbers of vessels for various commercial purposes and to various interests.

Office of Scientific Research and Development Even before the United States entered World War II, the President, appreciating the role of scientific discoveries in modern national defense, created the Office of Scientific Research and Development. This organization recruited large numbers of scientists both directly and indirectly through universities to work on certain military problems. The cutting off of the quinine supply from the Dutch East Indies presented a most serious problem which yielded to solution only after great expenditure of effort. During the early months of the war more members of the armed forces were incapacitated as a result of malaria, which in turn grew out of lack of quinine, than as a result of battle. The development of products which have proved superior in some respects to quinine may be regarded as a major achievement. Even more sensational was the development of the atomic bomb which was used with such startling effect before the capitulation of Japan. The experience arising out of the role of science in World War II doubtless played some part in the decision to create a permanent Interdepartmental Committee for Research and Development and an Army-Navy-Air Force Research and Development Board in 1947.

Office of War Information The Office of War Information [18] came into being in June, 1942, as a result of an executive order which consolidated the various war information services of the

[17] For treatment of this agency, see Chap. 24.
[18] This agency was abolished in September, 1945.

government into a single agency. Designed to mobilize the press, radio, motion picture, and magazine facilities of the United States in such a manner as to promote the war effort as well as to handle the presentation of information regarding the role of the United States in foreign countries, its program was naturally an ambitious one.

Office of Economic Stabilization The unprecedented demand for labor together with the scarcity of consumer goods and the wage scales prevailing in the defense plants combined to produce a situation which might have led to wild inflation. Obviously this would have been undesirable in general, but its potential effect on the war effort made it doubly necessary that precautionary steps be taken. Hence the President in late 1942 decided to establish an Office of Economic Stabilization designed to formulate a national policy relating to salaries, wages, rents, profits, production of consumer goods, and other matters. The declared end of such an undertaking was the prevention of more than nominal increases in the cost of living, the elimination of competition of various regions or industries for a labor supply, and of course above all the vigorous prosecution of the war and the subsequent reconversion program. The O.E.S. became a part of the Office of War Mobilization and Reconversion in the fall of 1945.

Office of War Mobilization and Reconversion Despite the many agencies which had been created in 1941 and 1942 to carry out the national defense program, there seemed to be somewhat of a lag in 1943. Perhaps the very existence of so many organizations all designed to assist in the successful carrying on of the war contributed to this. At any rate the President decided that it would be wise in 1943 to impose an Office of War Mobilization, headed by a Director of War Mobilization, on the structure. This agency was given substantial authority to co-ordinate the over-all efforts and to develop a unified program intended to make maximum use of the national manpower, resources, industrial system, and general economy in promoting the war. It received the power to settle controversies between the governmental agencies having to do with the production, procurement, distribution, and transportation of military or civilian supplies and to issue directives to the agencies involved. Later the name of this agency was changed to Office of War Mobilization and Reconversion and it was given

general responsibility for the reconversion program. Following the end of hostilities this agency came into great prominence and was relied on by the President for many services.

Reconversion It is a task of the first magnitude to convert the economy of a country such as the United States to a point where it is able to support a World War II; hardly less difficult is the process of reconverting that war economy to a peacetime status. The job of demobilizing millions of soldiers and sailors, transporting them to their homes, and absorbing them into the offices and factories of the country calls for a high degree of skill. Then there is the problem of what to do with those who have held places in defense industries which are no longer operating and cannot be converted to consumer-production. In an earlier day the government felt that its job was done when it won a victory and got the military personnel home, but times have changed and public opinion now demands far more from the public authorities. What to do with the surplus war property which aggregates many billions of dollars in value and which was not required by the peacetime Army and Navy was another sizable problem. Contracts made when the end of the war seemed not quite certain had to be terminated. Many of the national defense agencies themselves had to be wound up or at least reorganized. All of these problems confront a nation during a postwar period, call for the most careful of handling, and have far-reaching implications. Even before the end of World War II, the War Production Board, the Office of War Mobilization and Reconversion, the War Manpower Commission, and other agencies gave considerable attention to reconversion in its various aspects.[19] But it is difficult to plan while a war continues and wars have a way of ending suddenly; then almost immediately steps have to be taken toward the transition to a normal economy. People are war-weary; their tempers are frayed; their demands may be unreasonable; they expect the impossible at once. All of these factors complicate reconversion.

Selected Bibliography

Armitage, M., *United States Navy*, Longmans, Green & Company, New York, 1940.

[19] The War Production Board issued a report on the "Needs and Methods of Reconversion" on May 27, 1945.

Baldwin, Hanson W., *What the Citizen Should Know about the Navy*, W. W. Norton & Company, New York, 1941.

Banning, Kendall, *Our Army Today*, Funk & Wagnalls, New York, 1943.

Baruch, Bernard M., *American Industry in War*, Prentice-Hall, New York, 1941.

Brodie, Bernard, *A Layman's Guide to Naval Strategy*, Princeton University Press, Princeton, 1942.

Buehler, E. C., ed., *Compulsory Military Service*, Noble & Noble, New York, 1941.

Civilian Production Administration, *Industrial Mobilization for War*, Vol. I, Government Printing Office, Washington, 1947.

Corson, J. J., *Manpower for Victory; Total Mobilization for Total War*, Farrar & Rinehart, New York, 1943.

Gutkind, E. A., *Creative Demobilization*, 2 vols., Oxford University Press, New York, 1944.

Harris, S. E., *Economics of American Defense*, W. W. Norton & Company, New York, 1941.

——, *Price and Related Controls in the United States*, McGraw-Hill Book Company, New York, 1944.

Hartney, H. E., *What the Citizen Should Know about Our Air Forces*, W. W. Norton & Company, New York, 1942.

Herring, E. P., *Impact of War; Our American Democracy under Arms*, Farrar & Rinehart, New York, 1941.

Hirsch, Julius, *Price Control in the War Economy*, Harper & Brothers, New York, 1943.

Howard, L. V., and H. A. Bone, *Current American Government: Wartime Developments*, D. Appleton-Century Company, New York, 1943.

Johnsen, Julia E., comp., *Compulsory Military Training*, The H. W. Wilson Company, New York, 1941.

Knox, Frank, *The United States Navy in National Defense*, American Council on Public Affairs, Washington, 1941.

Mansfield, Harvey C., *A Short History of O.P.A.*, Government Printing Office, Washington, 1948.

Mock, J. R., and E. W. Thurber, *Report on Demobilization*, University of Oklahoma Press, Norman, 1944.

Nicholls, W. H., and J. A. Vieg, *Wartime Government in Operation*, The Blakiston Company, Philadelphia, 1943.

Nourse, E. G., *Price-making in a Democracy*, Brookings Institution, Washington, 1944.

Spiegel, H. W., *The Economics of Total War*, D. Appleton-Century Company, New York, 1942.

Zimmermann, Virgil B., *Problems in Price Control: National Office Organization and Management*, Government Printing Office, Washington, 1947.

Zink, Harold, *American Military Government in Germany*, The Macmillan Company, New York, 1947.

29 · *State Constitutions*

Their Diversity It is to be expected that forty-eight separate constitutional systems will present a diverse picture. When one takes into account the notable variation in area and population and the highly industrial complexion of certain states in contrast to the agricultural economy of other states, it is hardly to be wondered that one constitution devotes a dozen pages to a matter which is disposed of by another constitution in a single line. The situation is further complicated by the wide gap of time which separates some of the constitutions from others.[1] The constitutions of several of the states located in New England are almost as old or even older than the federal Constitution itself. On the other hand, the newest constitutions have been framed during the present century and in certain cases since 1920.[2] Considering the great changes that have taken place in the United States during the last century, it would be strange indeed if state constitutions of the early nineteenth century fitted into the same mold as the more recent ones. The constitution under which Vermont continues to operate requires only a few printed pages for its various sections;[3] the constitution of Louisiana runs to more than 250 closely printed pages! Inasmuch as business enterprises were relatively small in size a hundred years ago, the older constitutions have very little to say about corporate structure and practices. In contrast the quite

[1] Virginia drafted its first constitution in 1776, while New York followed suit in 1777. In both cases far-reaching revisions have been made, but there are remnants of the original documents in the revised constitutions. Texts of the various state constitutions are conveniently assembled in New York Constitutional Convention Committee, *Constitutions of the States and the United States*, State Printer, Albany, 1938.

[2] New York undertook a revision of its constitution as recently as 1938. New Jersey, Georgia, and Missouri have drafted new constitutions since 1940.

[3] The shortest original constitution is that of Vermont; then comes Rhode Island.

recent constitution of Oklahoma devotes fourteen pages of standard-size type to corporations alone.[4]

Their Similarity Despite the striking variation to be noted among the state constitutions in both length and content, one must not ignore the basic agreement which they reflect on many aspects of government. Indeed it is fair to assert that in fundamentals they are more similar than they are divergent. All of them specify a government of three branches: executive, legislative, and judicial, and establish these on a foundation of separation of powers. Moreover, in every case the head of the executive department is known as a "governor" and except for Nebraska all of the legislatures are divided into two houses. The labels attached to courts are not the same in all of the states; nevertheless, there is not a little similarity in the general court structures of the several states. Local government is not the same in every detail throughout the United States, but the city and county are basic everywhere, except in Louisiana. Freedom of speech and of religion, the right to hold property, and in fact most of the rights of citizens are substantially the same in all of the constitutions, with the possible exception of Louisiana which has used the *Code Napoléon* as the basis for a legal system.

A General Comparison of the Federal and State Constitutions Under our system of government, the national government is given specific powers which are expressly enumerated in the Constitution.[5] States, on the other hand, do not enjoy such definite authority; they are supposed to have the powers which are not given to the national government and are not expressly forbidden to them. This necessitates a far-reaching legal differentiation: the national Constitution must be searched for positive authorization, whereas a state constitution does not have to contain a specific clause which confers power. In other words, if an act of Congress is challenged, it is necessary to show the courts one or more provisions of the federal Constitution which grant such power; whereas when a state act is objected to, the courts will ordinarily inquire only whether the state constitution prohibits such an exercise of power. Thus the state constitutions tend to be somewhat more negative in charac-

[4] A convenient table containing pertinent data relating to the various state constitutions may be found in the *Book of the States, 1945-1946,* Council of State Governments and American Legislators' Association, Chicago, 1945.

[5] Of course, this has been liberally interpreted by the courts to include implied powers.

ter than the federal counterpart. The brevity of the federal Constitution makes for a general tone which is characteristic of the older state constitutions, but quite in contrast to the detailed provisions of the newer ones.

Broader Constitutional Systems Compared In both the federal and the state spheres the formal constitutions are supplemented by legislative enactments, judicial interpretations, and custom and usage. Consequently the actual constitutional systems of both the national government and the states are far broader than those who are familiar with only the formal constitutions suppose. Inasmuch as the newer state constitutions frequently include large numbers of provisions that are similar to legislative acts in other states, the particular role of the formal constitution varies from state to state. Where the formal document is brief, much attention will have to be given the laws passed by the legislature and the decisions of the courts, as is the case with the federal Constitution. However, if a state constitution covers two hundred or so printed pages, the role of statutes is likely to be distinctly less important in the broad constitutional system than it is in the federal sphere.

CONTENTS OF A STATE CONSTITUTION

Irrespective of their divergencies, most state constitutions concentrate on the following: (1) a bill of rights; (2) the framework of the state government; (3) state finance; (4) provisions relating to the regulation of business, the construction of public works, the maintenance of a public-school system, and the furnishing of certain welfare services; and (5) the amending process.

1. Bill of Rights It was early held by the federal courts that most of the provisions included in the first eight amendments to the federal Constitution do not apply to the states.[6] In order to extend the rights guaranteed in those amendments virtually all of the states have drawn up bills of rights which are attached to their constitutions. Some of these are more elaborate than others, but they repeat in large measure the rights of person and property which are mentioned in the first eight amendments to the federal Constitution.

2. Framework of Government Although the functions of the various agencies of state government may not always be clearly specified in state constitutions, the structure is invariably given at-

[6] For a detailed discussion of these, see Chap. 7.

tention. The office of governor is dealt with in more or less detail; the composition and organization of the legislative branch are provided for; and the judicial system is at least outlined, although the details may be left to legislative discretion. Other elective offices ordinarily come in for attention in the older constitutions, which were drafted at a time when it was thought that all of the principal officers of government should be chosen by popular election. How much space will be devoted to the administrative agencies of state government depends in large measure on the period at which the constitution was adopted. In the early constitutions little or no attention was given to administration, since that aspect of government was still in its infancy. The newer constitutions invariably have something to say about the administrative departments and in the case of some of those which are the most detailed spend many pages in specifying structure and duties. County and city governmental structures are also laid down at least in broad outline and may in some instances receive generous attention.

3. State Finance Framers of state constitutions have long been interested in the financial aspects of state government. They have frequently attempted to regulate state indebtedness by naming a maximum amount or fixing the relationship between the debt total and the assessed valuation of property in the state. Sometimes they have set down the purposes for which a state debt could be incurred; occasionally they have declared that a debt shall only be permitted for protecting the state against invasion or domestic disturbance. The more recent constitutions not infrequently provide for income, inheritance, and other types of taxes, lay down rules in regard to assessment and review, and set up state tax commissions. Special appropriations for certain purposes may be prohibited.

4. Business Regulation, Education, and Public Welfare Inasmuch as the national government has left the chartering of corporations in the hands of the states, detailed regulations must be drawn up which will govern the issuance of charters. Many of the states have had unfortunate experiences in dealing with business concerns and consequently take the precaution of inserting in their constitutions detailed restrictions relating to corporate organization, capital, responsibility of officers, revocation of charter, and taxation. Public-service corporations receive particularly careful attention

because of their past record of political manipulation as well as because of their intimate relation to the public welfare. Education has occasioned states comparatively little of the embarrassment associated with economic enterprise, but even so the framers of state constitutions ordinarily are disposed to lay down a few general principles. The extent of state control over local public-school systems may be indicated; provision is sometimes made for a state board of education and for regents of state universities; free textbooks may be prescribed; the revenues from public lands and certain licenses may be marked for educational use. In the field of public welfare it is possible that a state constitution will lay down the general rules for workmen's compensation, stipulate pensions for the aged, describe the organization of the department of health, provide for the administration of the penal and the insane institutions, and authorize the borrowing of money for public housing.

5. The Amending Process However careful the framers may have been in drafting a constitution, it will not be long before agitation for change arises. Errors may have crept in; the courts may have given an interpretation to a section which is not deemed satisfactory; new problems may arise which require constitutional authorization if they are to be handled; seemingly innocuous phrases may prevent action which is widely favored. In any of these exigencies an amendment will probably be suggested as desirable, perhaps to add clarification, again to add authorization or in other cases to repeal troublesome limitations. The conventions which are charged with preparing state constitutions realize the necessity of amendment and insert sections relating to the procedure. However, there is a considerable divergence of opinion as to how easy the process should be and consequently the states are by no means uniform in their requirements.

The Problem of Lengthy Constitutions It is probable that there would be general agreement that the long-drawn-out constitutions of certain states are far from ideal. But is this equivalent to saying that the prevalent trend in the direction of detail is a matter of vital concern? There is no universal opinion on this point. Lengthy state constitutions necessitate frequent amendments, unless obsolescence is to characterize them. This may require considerable time and effort from state legislators, voters, and perhaps the courts. Hastily prepared and ill-conceived limitations included in a consti-

tution may hold up action on an important matter for years. On the other hand, the very nature of our political process in the United States, the highly complicated economic system, and the diverse political psychology make more or less detailed constitutions almost inevitable.

The Model State Constitution For more than twenty years the National Municipal League has been promoting the cause of adequate state constitutions by furnishing a draft of what its Committee on State Government regards as a "model state constitution." The first model constitution made its appearance in 1921 and revisions have been issued in 1928, 1933, and 1941. Some idea of the careful attention given to the drafting may be gained from the fact that the committee spent two years on the 1941 revision. The 1941 edition of the model state constitution contains 116 sections which are organized into thirteen articles dealing with a bill of rights, suffrage and elections, the legislative branch, direct legislation, the executive, the courts, finance, local government, civil service, public welfare, intergovernmental relations, constitutional revision, and a schedule. The length of the entire constitution may be described as "moderate"—careful attention is given to most of the current problems confronting states, but there is not the plethora of details which clutter up some of the longest constitutions.

TYPES OF AMENDING PROCEDURE

Amendment by Legislative Proposal The traditional amending process looks to the state legislature for the originating of amendments. Proposals are presented by members much as are bills—in a recent year more than eight hundred were brought up in forty-three states [7]—and may or may not require more than ordinary majority vote to carry them. Several states, anxious to avoid undue haste, demand that two successive legislatures approve suggested amendments before the next step be taken. After an amendment has been proposed—and fewer than a hundred and fifty are usually approved in a single year by all the legislatures—it usually goes to the secretary of state's office to remain until the next general election when it is placed on the ballot for submission to the voters. Ordinarily a bare majority of the votes cast on an amendment is

[7] See H. W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 3, January, 1938.

sufficient to ratify, but New Hampshire asks a two-thirds majority and a few other states have special requirements.

Amendment by Direct Popular Action Those states which have adopted the initiative and referendum often supplement the traditional amending process by authorizing direct action on the part of the voters. The details of this method will be discussed later in connection with direct legislation.[8]

Amendment by Convention In those instances where minor changes are desired in a state constitution, it is the custom to use the two methods described above. But if there is a widespread feeling that the constitution needs a general overhauling, it is somewhat awkward to employ either the legislature or, in those states which permit, the initiative. Something like two thirds of the constitutions now in force authorize the calling of conventions for the purpose of considering a general revision. The legislature is ordinarily entrusted with the responsibility of deciding when this matter needs to be brought to the attention of the voters, although Michigan orders that it be done at least every sixteen years. If a majority of the voters favor a convention, the legislature then sets up the necessary machinery, deciding how many delegates there shall be, how they shall be chosen, where they shall assemble, when they shall begin work, and what their organization shall be. Of course the state constitution may have something to say about these items, but in most states the legislature is given that authority. Approximately two hundred conventions have been held, but only twenty-odd belong to the present century.[9]

Nature of Constitutional Conventions State constitutional conventions vary in size, but there is considerable feeling that they should not be so large that they are unwieldy. In contrast to the bicameral legislatures they consist of a single chamber, with an organization not unlike that of an ordinary legislative body. Committees are appointed to examine various sections of the old constitution or to consider the need for new provisions. The procedure is usually similar to that of ordinary lawmaking, with tentative drafts

[8] See Chap. 32.

[9] See W. Brooke Graves and I. J. Zipin, "State Constitutions and Constitutional Conventions," *Book of the States, 1941-1942, op. cit.*, p. 45. Of the 189 conventions held prior to 1940, 126 undertook the complete revision of a constitution; 12 undertook revision through amendments; and 3 failed to submit any proposals.

on certain points being submitted by members, committee investigation and report, debate by the delegates, and formal acceptance or rejection by roll-call vote. Party lines are frequently apparent and may be almost, if not quite, as definite as in any state legislature. However, there is a feeling in some quarters that partisanship has little or no place in constitutional revision and this has been reflected in recent conventions to some extent.

Submission of Revised Constitutions Strangely enough, about half of the state constitutions do not specify that the work of a convention be submitted to the voters for approval, but usage is sufficiently strong to constitute an unwritten law ordaining such procedure.[10] In asking the voters to pass on what has been proposed, the convention has to decide whether to request blanket approval or to present a series of proposals. Experience would seem to indicate that it is preferable to break the proposed revision into a half dozen or so parts and ask the voters to express themselves on each part.

Diverse Record of States on Amendments In view of the far-reaching changes that have taken place in the American scene during the last half century, it might be supposed that all of the states would have made generous use of the amending process. However, Tennessee has not changed her constitution at all since its adoption in 1870,[11] while Illinois and Kentucky have adopted only a handful of amendments, though in both cases their constitutions are nineteenth century.[12] South Carolina, California, Georgia, and Louisiana can each point to more than one hundred amendments. The total number of amendments adopted exceeds two thousand, or some 43 per state.[13] On the face it might seem that some of the constitutions were so wisely drawn up to begin with that no modification has been deemed necessary, but actually the explanation is not that simple. It is true that the careful work of some conventions has made it less necessary to amend. But some states have grown more rapidly than others and have had to face compli-

[10] Twenty-five of the revisions of constitutions have been rejected, and in thirteen cases some of the amendments submitted have failed to carry. *Ibid.*, p. 45.

[11] See W. H. Combs, "An Unamended State Constitution," *American Political Science Review*, Vol. XXXII, pp. 514ff., June, 1938.

[12] Illinois has had her constitution since 1870, Kentucky since 1891.

[13] See the current *Book of the States* for the latest statistics.

cated problems which were not anticipated when the state constitution was drawn up. The psychology of some states has been of such a character as to favor frequent change as a matter of principle. On the other hand, the basic caution of some of the eastern states has resulted in a grin-and-bear attitude long after amendments were definitely needed. Finally, there are those states which have been prevented from making changes by the onerous character of their amendment procedure. Where an amendment has to be proposed by two successive legislatures, a provision of the constitution permits only one or two proposals to be put to the voters at one time, and a majority of those participating in the general election are required to cast their votes in favor of the amendment, it is hardly to be expected that frequent changes will be achieved. If a few of the states make the mistake of veering wildly from one position to another, it is equally true that others have bound themselves so tightly by difficult amendment procedure that they are unable to accomplish desirable ends.

STATE CONSTITUTIONS AND THE COURTS

State constitutions may be interpreted by either state or federal tribunals. In so far as it is alleged that a provision of a state constitution conflicts with the federal Constitution, it is possible to secure federal consideration, usually by the Supreme Court itself. Occasionally the highest court of the land will decide that a section of a state constitution contravenes some stipulation or prohibition of the federal Constitution, but this is not a common occurrence. On the other hand, state courts are constantly passing on phrases of the constitutions of the states in which they are located and frequently throw out state legislation on the ground that it is prohibited.

General Attitude of State Courts The record of state tribunals varies from time to time and from place to place; consequently it is somewhat difficult to generalize. However, it may be stated to begin with that the attitude of state courts has been far less liberal toward state constitutions than that of the federal Supreme Court in the case of the national Constitution. Despite recent criticisms that have been aimed at it, the Supreme Court of the United States has in general followed a policy of expanding the federal Constitution to meet changing conditions—at least in so

far as that could be done by implication. State courts, in contrast, have often, although by no means always, adopted a strict attitude toward the provisions of their state constitutions. Indeed at times it almost seems that they have gone out of their way to interpret a clause in the most limited way possible. This is doubtless due in part to the more negative and detailed character of state constitutions as a whole; it also may be attributed to the greater ease with which formal amendments may be added. Nevertheless, when all of these factors have been given due credit, it is still probable that the basic attitude of state courts has been less favorable than that of the federal Supreme Court in the case of the national Constitution.

The Current Trend toward Liberalism During recent years there has been some disposition on the part of state courts to follow a more liberal policy. Less emphasis has been placed upon technicalities; a middle-of-the-road rather than an extremely legalistic course has been pursued. There are even a few instances where state courts have been distinctly liberal in interpreting provisions, even in cases where former justices have ruled that a narrow rule should be applied.

Selected Bibliography

Bradshaw, W. L., "Missouri's Proposed New Constitution," *American Political Science Review,* Vol. XXXIX, pp. 61ff., February, 1945.

Callender, C. N., E. W. Carter, and C. C. Rohlfing, "The State Constitution of the Future," *Annals of the American Academy of Political and Social Science,* Vol. CLXXXI, September, 1935.

Dealy, J. Q., *The Growth of American State Constitutions,* Ginn & Company, Boston, 1915.

Dodd, W. F., *The Revision and Amendment of State Constitutions,* The Johns Hopkins Press, Baltimore, 1922.

Godshall, W. L., and others, "State Constitutional Development," *American Political Science Review,* annual articles.

Hoar, Roger S., *Constitutional Conventions: Their Nature, Powers, and Limitations,* Little, Brown & Company, Boston, 1917.

McCarthy, M. B., *The Widening Scope of American Constitutions,* Catholic University of America, Washington, 1928.

McClure, W., *State Constitution-Making,* Marshall & Bruce Company, Nashville, 1916.

Model State Constitution, 4th ed., National Municipal League, New York, 1941.

New York State Constitutional Convention Committee, *Constitutions of the States and the United States*, State Printer, Albany, 1938.

Official Publications Relating to American State Constitutional Conventions, The H. W. Wilson Company, New York, 1936.

O'Rourke, V. A., and D. W., Campbell, *Constitution-Making in a Democracy; Theory and Practice in New York State*, The Johns Hopkins Press, Baltimore, 1943.

Rohlfing, C. C., and E. W. Carter, *State Constitutions, Provisions for Amendments and Conventions*, Council of State Governments, Chicago, 1935.

Saye, A. B., "Georgia's Proposed New Constitution," *American Political Science Review*, Vol. XXXIX, pp. 459ff., June, 1945.

30 · *The Governor*

Although the forty-eight states may differ in their traditions and their activities, in every case a governor is provided to serve as head of the executive branch of the government.[1] That is not to say that the office is exactly the same in authority in every state, for there is a fairly wide variation in the powers conferred on state governors. In those states where a reorganization has effectively centralized the responsibility for supervising the multiplicity of administrative services, the role of governor is likely to be important. In other states where a number of popularly elected officials, such as the state treasurer, the secretary of state, the attorney general, the auditor, and the superintendent of public instruction, are endowed with important authority and owe little obedience to the governor, the latter is the chief executive in a rather nominal fashion. Nevertheless, the position of governor is almost always regarded with considerable esteem by the citizens of a state and consequently, even in those instances where extensive authority is lacking, the incumbent is likely to be frequently in the limelight.

THE NATURE OF THE OFFICE

General Qualifications The constitutions of the various states lay down certain qualifications which candidates for the position of governor must meet. Citizenship in the state and the United States is always stipulated; residence of reasonable duration, often five years, is prescribed; a minimum age of thirty years is ordinarily asked. At one period certain religious beliefs were frequently considered essential, but most of the states have now abandoned any formal requirements of that character. Almost any candidate can meet these rather simple qualifications, but there are others imposed

[1] The most up-to-date and authoritative study of governors is Leslie Lipson, *The American Governor: From Figurehead to Leader*, University of Chicago Press, Chicago, 1939.

by custom which are far more onerous and which often rule out able candidates. Except in rare instances, it is not to be expected that one who lacks strong political support will have any real chance of being elected governor, no matter how impressive a record he may offer in private affairs. This does not necessarily mean that a governor must have been personally active over a long period of years in politics, but it does ordinarily imply that there has been a friendly attitude toward the party organization. Candidates who have had direct experience in politics have a distinct advantage over others because they know the ropes and have contacts which may prove helpful. Thus governors have frequently served as delegates to political conventions, members of state legislatures, prosecuting attorneys, and lieutenant governors before elevation to the position of chief executive.

Miscellaneous Qualifications Numerous other qualifications are sometimes ordained by the traditions of a certain state. In agricultural states there is often a disposition to expect a governor to have some connection with farming, though actual dirt farming may not be demanded. Where labor and agriculture are dominant, successful business and professional men sometimes find that their aspirations in the direction of the office of governor are more or less hopeless because of a strong feeling against such backgrounds. Mediocrity seems to be at a premium in some states because of a widespread distrust of eminence in a profession, business, or anything else. As one man expressed it, "What this country needs more than anything else is five hundred first-class funerals. Get rid of those who have had more than an eighth-grade education or made a pile of money, and put common people in their places, and the country would be much better off." Nominal adherence to a conventional religious group is often almost an unwritten law, while prominence in an unpopular church may ruin an otherwise promising political career. Occasionally a comparatively young man [2] will be chosen, but an age of fifty is usually regarded as a stronger recommendation.

Nomination and Election In the great majority of states governors are now nominated by direct primary, but there are such states as New York and Indiana that cling to the party convention.[3]

[2] Harold Eugene Stassen was thirty-one when elected governor of Minnesota.
[3] See Chap. 10 for a discussion of these methods of nomination.

Election except in Mississippi and Georgia[4] is by popular vote, although in several of the southern states the choice is actually made in the Democratic party primaries. In general elections the candidate who receives the largest number of votes is declared elected, though he may not have polled a majority of all the ballots which have been cast.

Term The states are almost evenly divided at present between the two-year and the four-year term for a governor, although in the past the shorter term has been favored. Proponents of the two-year term sometimes maintain that four years is a long time to put up with a poor governor and that a corrupt chief executive can do a great deal of damage in that length of time. On the other hand, experience has indicated that two years does not permit a governor sufficient time to familiarize himself with the problems of a state and achieve anything like an adequate program. Even if re-election is not contrary to local tradition—approximately one fourth of the incumbents have recently been re-elected[5]—a governor has to spend a good deal of time building up political fences and making arrangements to get himself a second term. The local situation may determine which term is preferable, but in general the four-year period seems to have the advantage. Thirteen states currently limit their governors to a single term; three forbid more than two consecutive terms; and Tennessee fixes a limit of three consecutive terms.

Salary Considering the variation in population and wealth among the states it is not surprising that gubernatorial salaries are not at all uniform. A few states actually expect their governors to get along on $7,000 per year or less, but the rank and file allow from $7,000 to $10,000. Anything in excess of $10,000 is exceptional,[6] although New York pays its governor $25,000 per year. With few exceptions states also furnish residences for the use of governors and their families. Various allowances are usually made for travel, incidentals, and entertainment, though the amounts involved may be far from generous. Some governors maintain that they are paid far less than they are entitled to, especially in view of the fact that football coaches and presidents of the tax-supported universities in

[4] These states use a system somewhat like the electoral college, which is familiar in connection with the presidency.

[5] See the most recent *Book of the States*, Council of State Governments and American Legislators' Association, Chicago, for the current situation.

[6] Fourteen states pay from $10,500 to $25,000.

their states receive half again as much. To some extent the difference is more apparent than real because of allowances which a governor draws in addition to his salary, but there are cases where the coaches actually seem to overshadow the governor. It is only fair to point out that some governors carry on their private affairs along with their official duties and consequently do not depend entirely on public compensation. Nevertheless, in the larger states the job is one which demands all of the time and energy that a single person can give.

Removal Although many governors have had their critics and few governors find it possible to please everybody, extreme cases of corruption and inefficiency have fortunately been comparatively rare. The eleven states that make provision for the recall of state officers have made use of this device only once in connection with a governor. Governor Lynn J. Frazier of North Dakota was recalled in 1921, but the depressed economic conditions following World War I perhaps accounted for this rather than any major shortcoming on his part; at any rate he was later sent to the United States Senate by the same voters. Impeachment is provided in all of the states as a device that may be used under extreme provocation to get rid of governors. The process resembles that which is provided in the federal Constitution,[7] although in New York a special impeachment court is set up to hear charges, thus relieving the state senate of that task. Oklahoma has the national record when it comes to using the impeachment process. Governors Walton and Johnson were actually taken out of office during the 1920's and attacks which did not result in successful impeachment have been launched against other governors.

Removals Difficult when Justified The statistics relative to the recall or impeachment of governors do not tell the whole story. The inertia of the general public has condoned or at least ignored the conduct of governors which if not corrupt has been, to say the least, highly indiscreet. In other cases public opinion has become aroused only to find that it could accomplish little because of an irresponsible legislature. If a political machine controls a state government, it is probable that a corrupt governor will be flanked by a dishonest legislature. Inasmuch as the legislature has to vote and try the impeachment charges against a governor, it can hardly

[7] For a discussion of this, see Chap. 18.

be expected under such circumstances that effective steps will be taken. Indeed it would be a case of a legislative pot calling a gubernatorial kettle black.

Political Importance of the Office The tendency of the rank and file of the people to identify the governor with state government naturally makes his position strikingly important from a political standpoint. Moreover, the publicity which is generally accorded the governor keeps him constantly before the people. If the person holding the office has any force at all, he will enjoy a considerable measure of influence beyond any authority conferred on him by the state constitution or laws. When he goes on record as favoring a policy, an important step is taken toward bringing that policy into operation, even if some other agency of government has the final say. The very political committeemen and bosses who were responsible for naming the governor in the first place may find it difficult to withstand his influence, much as they loathe being jockeyed into such a position.

Examples of Promotion to Higher Offices A governor who manages his career well may use the office as a steppingstone to higher political office. During the present century Governors Theodore Roosevelt, Woodrow Wilson, Calvin Coolidge, and Franklin D. Roosevelt were graduated into the presidency. A large number have entered the Senate of the United States. Others have been given high positions in the national government; Paul McNutt went to the Philippines as high commissioner and later returned to Washington as Federal Security Administrator; Frank Murphy held a similar post in the Philippines and then took a place on the bench of the federal Supreme Court; while Governor George H. Dern of Utah became the first Secretary of War under Franklin D. Roosevelt.

MULTIFARIOUS ACTIVITIES OF A GOVERNOR

Almost without exception state governors have heavy demands made upon their time and energy. The chief executive of a very populous state may be busier than his colleague in a less thickly settled commonwealth. The location of a state capital enters into the picture, since a metropolitan capital produces more social obligations than one which is small and somewhat distant from an urban center. The psychology of the people may also condition the bur-

den; some states place more emphasis upon public speaking and formal occasions than others. But in any event, unless a governor withdraws himself from society, he is likely to be on the go from morning until night every day of the week.

Office Routine Governors vary in the amount of time which they spend in their offices. Much depends upon how adequate a secretarial staff is maintained and upon how easily a governor delegates work to others. There are governors who arrive at their offices before eight o'clock in the morning and remain, except when important engagements call them out, until well into the evening, at times even until midnight or after. At the other extreme there are those who get down slightly before noon, take a long time out for lunch, and spend only a modicum of time there during the afternoon. Something depends upon the time of year. If the end of a legislative session is near or the finishing touches are being placed on a budget, more time is naturally devoted to office duty than during the summer months when there is nothing out of the ordinary going on.

Contacts with the People Most successful governors regard constant contact with the electorate as essential. This may be direct or it may be maintained through intermediaries. Those governors who like people and find it agreeable to talk to representatives of various sections of the population often devote many hours each week to receiving callers. If the word gets out that a governor is willing to receive visitors, it is a rare state which will not pour a constant stream into his office. Representatives of religious groups, civic organizations, taxpayers' associations, labor unions, chambers of commerce, and farmers like to discuss their problems with the governor and perhaps enlist his support for some project which they are sponsoring. Seekers of public jobs and contracts will bring their claims to the governor's personal attention if he permits. Visitors from other states may wish to extend greetings; school superintendents want the governor to receive their students who are touring the capital; there are the crowds of those who hope to increase their own sense of importance or satisfy their curiosity by calling on the ranking political officer of the state. Unless a governor has an iron constitution it is necessary to limit the number of callers, for he might easily spend all of his time on this alone. Some governors who do not find it easy to meet people adopt the policy of seeing

only the most demanding and consequential callers, shunting off the remainder on their secretaries. In many cases it may be essential that a chief executive follow a policy of seeing only a few of those who wish to talk to him, but he loses a valuable source of information if he goes too far in this direction. Secretaries may report to him what they have learned; newspapers may furnish some idea of what is going on in the public mind; political advisers frequently can assist; but a direct personal contact has no satisfactory substitute.

Paper Work There is an immense amount of paper work attached to the office of governor, especially in the larger states. The bills which are passed by the legislature constitute a heavy burden during the period when that body is in session. If the governor is responsible for drafting the budget, there is a great deal of paper work to be done in that connection. Where there is any responsibility for pardons and reprieves, the volume of documents often bulks large. Extradition proceedings involve official papers; litigation in which the state is a party may be handled directly by the attorney general, but the governor may also be called upon to pass on certain matters. Communications from the various administrative departments, the political organization to which the governor belongs, the many pressure groups in the state, the national government, and a host of other sources are constantly coming in and often call for more or less careful attention. It is the custom to maintain secretaries who deal with patronage, pardons, extradition, routine correspondence, budgetary matters, and so forth, but even so a conscientious governor finds that he must give a great deal of time to paper work himself.

Public Appearances There is a tradition in many states that the governor will appear at numerous public functions, perhaps merely to take a bow, again to extend official greetings, or in other cases to make a formal address. Distinguished visitors from without the state are frequently received by the governor in person; conventions schedule a session at which the governor will appear to extend an official welcome; dedications of public buildings are not regarded as complete unless the chief executive presides or at least puts in an appearance. Political conventions on a state-wide level, of course, expect the presence of the governor if he is of their party. The state fair often designates one day as governor's day, thus making necessary a personal appearance if not a speech; the

most spectacular football games as the state university see the governor and his staff in an official box; in a big-league baseball game the governor may be called upon to throw the first ball. Private universities may expect the governor to attend their commencement exercises, to help inaugurate their presidents, and to address their convocations.

Social Activities Unlike the President of the United States, a state governor is not ordinarily accorded a position which excuses participation in social functions. Consequently numerous invitations are received for dinners, luncheons, theater parties, receptions, weddings, fishing trips, week-end house parties, and almost innumerable other events. Some governors delight in the social life of their capitals and may be found almost every day of the week at various social functions; others follow a more restrained policy. But it requires great strength of will to refuse all of the social engagements which are showered upon an incumbent of the office of governor.

SPECIFIC FUNCTIONS OF A GOVERNOR

A Classification of Gubernatorial Functions Despite the wide diversity in extent of authority, it is possible to classify the functions of governors as follows: (1) making of appointments and removals, (2) supervision of administration, (3) oversight of financial matters, (4) granting of pardons and paroles, (5) legislative leadership and control, (6) military authority, and (7) relations with the national government and other states.

1. Power over Appointments and Removals There is great diversity from state to state in the extent to which the governor exercises the power to make appointments. At an earlier period the state legislature usually was entrusted with the appointing power, but that system gradually gave way, until at the present time the general assembly ordinarily chooses only its own staff of clerks, secretaries, and sergeants at arms. The governor succeeded the legislature as the dispenser of public positions and continues to wield that function to a greater or less extent in all of the states. However, in those states which have adopted a merit system he may actually have little to do with filling the rank and file of the jobs.

Selection of Department Heads Unlike the federal government, the states have long maintained elective positions in the executive and the administrative departments. There has been a trend

during the last several decades toward cutting the number of these down but the common practice is still to fill the office of state auditor, secretary of state, attorney general, and state treasurer by popular election. Some states go beyond that and place the superintendent of public instruction, the public service commissioners, and even more minor positions on an elective basis. Consequently the governor does not have the authority to name all of the department heads or policy-determining officials, despite the fact that he may be considered generally responsible for the conduct of their offices. On the other hand, it is important to note that the chief executive of a state usually has the opportunity of appointing a number of department heads. The more recently established administrative departments have rarely been placed in the same category as the earlier ones and hence the executive officers of the departments of public welfare, labor, health, commerce, agriculture, and conservation receive their positions through appointment rather than election. The governor may be given the sole right to name these officers or he may be required to submit nominations which have to be approved. The state senate, or in the New England states the governor's council, receives these nominations and must confirm them before they become effective. From the standpoint of efficient administration the governor should be permitted to appoint all of the administrative heads without the necessity of asking for confirmation, but the old customs of popular election and legislative check are persistent in holding on. Nevertheless, there is a definite trend in the direction of giving the governor greater leeway in this field.

Minor Positions under a Merit System For every policy-determining position in a state there are ordinarily hundreds of other jobs which call for clerical service, custodial work, and technical consultation. In the 40 per cent or so of the states that have adopted the principles of merit employment all or some of these places are filled by competitive examination and the role of the governor is ordinarily unimportant—that is, if the system functions without political interference. In some instances an unsympathetic governor will almost, if not quite, manage to evade the merit rules entirely. The civil service commission may be filled with incompetents; its appropriations may be cut so drastically that it has no money to give examinations; temporary appointments dictated by

the political organization may virtually supplant merit appointments. Nevertheless, in general a governor's authority over routine appointments where a merit system is in operation is not extensive.

Minor Positions under the Spoils System In the majority of the states the spoils system continues to determine who shall hold state jobs. When one party loses out and another comes in, there may be a turnover in state personnel which exceeds 90 per cent.[8] If a party remains in power under a new governor, the displacement may not be wholesale in character, although it is not uncommon to find large-scale shifts. Even while a single governor remains in office a spoils method of filling state jobs will frequently involve numerous changes as one faction becomes less powerful and another comes into greater favor. The number of positions in state governments is comparatively small in comparison with the national government—a few states employ twenty thousand or more but a pay roll of eight or ten thousand is much more typical. But even this number of jobs requires a vast amount of consideration if there is no merit plan.

How much personal attention does a governor give to the filling of these thousands of minor positions in those states where a merit system is lacking? No categorical answer can be given to that question because so much depends upon the state, the time, and the person who holds the office of governor. In some states there is a tradition of reasonable permanence, though no formal merit plan is in operation, and certain state employees retain their positions for many years. Again one or more departments may be permitted to develop modern personnel systems, even though the rank and file of the state positions are filled on a spoils basis.[9] If there is a great dearth of jobs in private employment, pressure on the governor may become almost intolerable and he will feel it necessary to take a hand. Some governors have almost unlimited energy, enjoy receiving visitors, and spend a considerable amount of time going over the applications of those who want public jobs. In contrast, others will find so many other problems to occupy their attention and be so miserable in attempting to distribute a few jobs among an army of seekers

[8] Before Michigan adopted the merit system, it experienced a turnover of approximately 90 per cent. With the parties in and out, sometimes at two-year intervals, the confusion was great.

[9] The welfare department, health commission, banking department, and public education department are sometimes given this special status.

that they will avoid personal activity in this field as far as they possibly can.

In those states where a political organization is strong much if not most of the labor in connection with the filling of state jobs will be done by the precinct committeemen, the county chairmen, and the state committee. Applications will be ignored by appointing officers unless the endorsement of these political agents is presented.[10] Governors frequently maintain patronage secretaries who act as liaison officers between the party organization and the state departments, receiving recommendations from the former, directing the applicants to departments which have vacancies, and clearing difficulties which arise. A governor may be hardly more than a figurehead under such an arrangement—in so far as he enters the picture at all it is merely to give general directions to his patronage secretary, issue the necessary orders, and seek to keep the political organization in good humor.

Removals The role of the governor in removing from office is closely related to his power of appointing. In the case of department executives he may usually compel a resignation if he made the appointment in the first place, but, of course, he cannot get rid of elective officials. If confirmation by a senate or council has been necessary, consent may have to be secured before removal, but in most jurisdictions the governor is given full responsibility for vacating offices. The multitude of minor positions is not likely to call for the personal attention of the governor to any great extent. Where the merit plan operates, removals will be handled under the rules and machinery of that system. Under the spoils arrangement the governor may determine how many jobs will have to be vacated to make way for the favorites of a newly prominent leader or faction, but he is likely to delegate to the department executives or to his subordinates the decision as to exactly who of the old employees must go. There is considerable question whether it is profitable for a governor personally to select the incumbents of minor positions; certainly it is not likely that firing those already on the pay roll to make opportunities for other political protégés will strengthen his political fences.

2. Supervision of Administration The governor is the logical officer to supervise the administrative departments of a state.

[10] See Chap. 9.

Reports may be required by the legislature; the power over the purse strings confers large control of an indirect type; but the legislature meets only a few months out of the year at most and by its very nature is hardly fitted to exercise detailed supervision. The courts may check administrative action when it exceeds legal bounds; yet they are not in a position to give constant attention. Of course, administrative departments, for example the auditing department, may keep the others within certain limits when financial routine is involved, but they can rarely impose any general control. The truth is that there is no agency other than the office of the governor equipped to assume the responsibility. In the absence of supervision there is bound to be conflict, waste, duplication, inconsistency, inefficiency, and divers other weaknesses.

The Role of the Governor under the Decentralized System At the time that the older state constitutions were drawn up, public administration had appeared on the scene only recently. Administrative departments were few in number and were saddled with relatively simple functions; tradition usually ordained that their heads should be elected by the voters. The governor was expected to keep a weather eye on what was done, but he was given very little specific authority in this field. As governmental problems have become more and more complicated, the nominal supervision imposed upon the governor under this early setup has proved increasingly unsatisfactory. The chief executive subscribes to an oath that he will see that the laws are faithfully executed, but he actually has comparatively little real power to accomplish this end under the decentralized type of state government. In so far as administrative functions are entrusted to elective officials, it is virtually out of the question for the chief executive to require co-ordination. Yet even under this system the governor is permitted to appoint some of the newer department executives as we have noted. If his freedom of removal is safeguarded in these cases he can assert a measure of control over a part of the administrative services. In the case of the agencies that remain beyond his domain the governor can do little more than bring indirect pressure to bear. He may appeal to the people to support his point of view or he perhaps can persuade the party leaders to assist in bringing recalcitrant officials into line. He may possess such qualities of leadership that he will inspire a degree of voluntary co-operation. Finally there is a possi-

bility that he can use his influence with the legislature in such a manner as to bring about some compliance with his wishes. But granted all of these indirect controls, the situation is not too satisfactory from the standpoint of effective administration.

The Centralized Type In those states which have brought their governmental structures up to date the role of governor in state administration is more important. Elected officials are eliminated to a large extent and the governor is permitted to name almost all of the administrative heads. Even where secretaries of state, state treasurers, and other traditional officials are still chosen by the voters, the centralized reforms have frequently made them more or less figureheads in their departments, conferring on the governor the power to exact co-operation. For example, the governor may fill all of the positions in these older agencies with the exception of the elective head and one personal deputy; if the elected head does not carry out the governor's wishes he finds his subordinates ignoring him because they look to the chief executive for their jobs. Real centralization gives the governor a more or less free hand in removing department heads who are unwilling to co-operate in a program of effective and co-ordinated administration. It may be added that even where the law confers this authority it is not always exercised in practice because of the political influence of certain officials.

Controls Available to the Governor The powers of appointment and removal are fundamental in achieving satisfactory administrative standards, but they do not suffice alone. They may be used in getting promising executive material to begin with and in firing those who have proved themselves incapable of fitting into an integrated scheme of administration. However, neither of these controls is of a routine character which can be employed to bring about day to day co-operation. Some governors have set up what amounts to a cabinet, the members of which are drawn from the major administrative agencies. Regular sessions of this body are held at frequent intervals for the purpose of going over common problems, clearing up misunderstandings, adopting uniform rules and practices, and giving attention to numerous other items which are essential to an efficient administrative system. Other governors prefer to deal with the various administrative heads on an individual basis and for that purpose schedule frequent conferences—even

where a cabinet is used individual conferences are useful as a supplementary device. Telephone calls and formal communications in writing are also employed by governors in effecting a co-ordinated system of administration.

Effective Supervision not an Easy Task It is probably evident that the task of the governor under a centralized arrangement is far from easy. It is not enough for him to make superior appointments and to ask for the resignation of those who prove unsatisfactory; nor will wise general policies always serve to produce an integrated system, since policies do not carry themselves into effect. A governor who expects to fulfill his obligations in this field must be constantly on the job, conferring, checking, suggesting, encouraging, and otherwise keeping his finger on what goes on in the various agencies. He must exact co-operation without interfering to such an extent that he will destroy departmental initiative. It is not strange, considering the difficulties involved, that comparatively few state governors have proved themselves masters in the administrative field.

3. Financial Oversight State constitutions follow the national Constitution in requiring legislative action before public funds can be spent—hence it is frequently stated that the control of the purse strings is in the hands of the legislature. At first sight it might seem that the role of the governor in financial affairs would necessarily be either nonexistent or at most very limited. However, there is a great deal more to state finance than merely passing appropriation and revenue measures. If there is to be order rather than chaos some provision must be made for preparing a budget; after the legislature has authorized expenditures and gone home, an efficient financial system requires a considerable amount of supervision to see that the provisions of the budget are observed.[11] Various arrangements have been made by the forty-eight states for handling these important necessities; some of them have recognized the governor only incidentally, but there has been a distinct trend in the direction of placing the primary responsibility on the governor.

Preparation of the Budget For many years state governments handled their expenditures in a haphazard manner, permitting each member of the legislature to propose the appropriations that interested him and trusting to providence that there would be

[11] See Chap. 35 for a more detailed discussion of state finance.

enough revenue to pay authorized appropriations. The experiences of the present century indicated that this easygoing attitude toward state finance was pushing states in the direction of insolvency; consequently almost without exception some attempt has been made by the states to establish more businesslike practices. At the present time the states ask either the governor or a commission made up of administrative and legislative officials, with the governor frequently a member, to handle this important job. It may be added that the trend for some years has been in the direction of making the chief executive responsible for preparing a budget. Of course, the governor does not do the detailed work himself, since that would be quite out of the question because of the large amount of work involved, but he is expected to lay down policies, keep informed of what is being done, and furnish general supervision. In addition to determining policies the governor may confer with the representatives of the agencies in regard to cutting their askings to such a point that the state treasury can be expected to find the necessary money. After the budget has been drafted, the governor sends it to the legislature, along with a message explaining its provisions and stating his recommendations. If the governor is permitted an itemic veto in financial measures, his voice in finally determining expenditures may be almost decisive.

Supervising the Operation of the Budget After the budget has been enacted into law and the new fiscal year has started, experience has indicated that a considerable amount of supervision by some central agency is almost an absolute requirement. The state auditor will furnish routine supervision, but he is not in a position to exercise the general supervision which is so essential. The governor and his immediate assistants are usually regarded as the logical persons to perform this task. They must check the irresponsible agencies that would spend all of their funds during the first six or eight months of the year and have nothing to go on the remainder of the year. It might seem that a definite rule that would limit expenditures each month to one twelfth of the total appropriations would serve the purpose, but some agencies carry on most of their work during the summer months or during some other period of the year. A governor can permit such agencies to spend more rapidly than those which are uniformly active throughout the year. In the absence of supervision there are almost always depart-

ments which will spend their funds as they like, irrespective of the terms of the budget. The wisest minds cannot foresee what will happen during a given year and hence it may be absolutely necessary to make expenditures that were not contemplated in the budget. What is needed is some central control which will hold agencies responsible for unnecessary departures from the items of the budget and at the same time will permit the transfer of funds from one purpose to another or even the incurring of deficits where no other way out seems to be available. If the governor is to be held responsible for what goes on in the administrative departments, it is evident that he is the person to exact such observance and permit necessary departures.

4. Pardons The pardon power is historically attached to the executive, for he is supposed to be able to determine whether the application of the law will work an unreasonable hardship in individual cases. In the states it is to be expected that the governor will be charged with this responsibility as a matter of general principle. However, as the position of governor has become more and more burdensome, it has seemed that it is unfair to expect the governor to assume full responsibility for passing on the many applications which are presented every year. Moreover, it is argued by some students of penology that a governor is not ordinarily informed of the details of the case and lacks scientific training in handling those persons with criminal proclivities. Consequently some of the states have set up boards, which may or may not include the governor in their membership, to handle this difficult task. Even where the governor's authority over pardons remains unimpaired, it is possible that comparatively little initiative will be assumed, since it is customary to refer applications to a special secretary, to the attorney-general's office, or to some other agency for investigation and recommendation. The governor then, like the national executive, carries out the advice which he has received. But there are still governors who give a considerable amount of their personal attention to reprieves, commutations, and full pardons. Needless to say, in a populous state the drain upon nerves will be great if a governor establishes the precedent of passing personally upon the appeals lodged by the friends and relatives of those sentenced to the more serious penalties.

5. Legislative Leadership and Control We have already

noted the significant expansion of the role of the President in legislative affairs during recent decades.[12] The record of the states is not uniform in this respect, but there has been a general trend along the same lines. Almost everywhere governors exert more influence in lawmaking than ever before,[13] while in some instances they have virtually usurped the legislative authority for a few years. In those states that have reorganized in such a manner as to centralize administrative responsibility in the hands of the governor, this increase in the legislative importance of the chief executive has been particularly far reaching. Control over the administrative agencies naturally gives rise to a recurring desire for new laws; a governor who can lay down the policies for the administrative departments assumes an air of importance which permits him to speak with authority to the legislature. Finally, it is probable that such a governor will be able to generate public opinion which will prod a reluctant legislature into favorable action.

Results of Gubernatorial Leadership There is an honest difference of opinion among those interested in public affairs as to the net effect of the enlarged role of the governor in legislative matters. Not a few substantial citizens view the situation with alarm, professing to see a serious menace to democratic traditions. Some governors have used their extensive power to build up personal machines which have not always been motivated by the highest ideals. In general, it seems fair to state that the exercise of far-reaching legislative power by state governors has been distinctly more selfish, more partisan, and more questionable than in the case of the President. Nevertheless, it cannot be disputed that there have been positive results, often of considerable magnitude. Delay in meeting pressing problems has been drastically cut; states in general are handling their functions with an efficiency never before equaled; and a great deal of most significant legislation especially in the public welfare field has been added to the statute books.

Messages At the beginning of a legislative session the governor is expected to present a message in which he surveys the

[12] See Chap. 15.

[13] Nevertheless, certain governors of the past have exerted great legislative influence. Theodore Roosevelt once declared: "More than half of my work as governor was in the direction of getting needed and important legislation." See his *Autobiography*, The Macmillan Company, New York, 1913, p. 306.

problems confronting the state, reports on recent accomplishments, and suggests what needs to be done immediately to meet new situations. How important one of these formal messages will be depends in large measure upon the person who holds the office of governor, the relations which characterize the legislative and the executive branches of the government, and the temper of the times. Occasionally a message will not even be courteously received by the members of the legislature; in other instances it will be ranked with the prayer of the chaplain, the taking of oaths of office, and other formal ceremonies incident to the beginning of a session. And in those states where a governor belongs to one party and the legislature is dominated by another, the situation becomes complicated. Yet an able governor can accomplish a good deal even under such trying circumstances. From time to time during a session a governor will send in messages on specific items, which may have considerable influence.

Presentation of Bills A number of the recent governors, not content with making recommendations, have dropped on the lap of the legislature bills which they have drafted to cover certain situations. These bills may have originated in an administrative department, with the chief executive serving as little more than an intermediary. But in a good many instances they have been prepared under the personal direction of the governor himself and represent something in which the governor takes a deep interest. Legislators often resent what they regard as executive encroachment on their prerogatives and consequently may go out of their way to knife one of these bills. However, in some instances the influence of the governor is so great and the pressure behind a bill is so immense that they simply cannot be ignored. A number of the most significant statutes enacted during the last decade have originated in the executive office and been pushed through the various stages by the governor.

Steering Activities The traditional pattern of state government ordained that the governor should manage the affairs of his branch and leave the legislature free to function as it desired. However, if the governor is to direct the administrative departments with vigor, he has to depend upon the support from the legislature in passing the laws which he wants and in making the appropriations required. Under an ideal system the legislature would doubtless

be all too glad to co-operate with the governor, but in reality there are usually complicating factors. Legislative jealousy of a strong governor may throw up barriers; pressure groups which oppose the gubernatorial program may get in their digs through the legislature; political expediency and patronage hungers may dictate a legislative policy quite contrary to what the chief executive has in mind. In order to meet this very real situation governors sometimes take a very vigorous hand in planning the work of a legislature. By hook or crook, often by promising lucrative state jobs after the legislature has adjourned, they get the support of key legislators. Then they proceed to meet regularly with these members for the purpose of deciding what action shall be taken by the legislature; indeed they may go so far as to make detailed plans for the steering of the daily sessions. Of course, resentment is almost bound to accompany such complete dictation, but a powerful governor, backed by public demand for action during periods of depression or other emergency, may have his way, at least for a time. Incidentally it may be added that the amount of work turned out by a legislature which is bound hand and foot by a decisive governor will often be two or three times that finished under ordinary circumstances. How wise it is to achieve even the most desirable ends at such a cost may be a question.

Patronage It is improbable that a governor could carry through a very ambitious program of legislation in most states without making some use of his patronage power. If a different type of person is elected to the legislature at some future time, it may not be necessary to resort to offering jobs, promising political advancements, and otherwise dangling favors before the eyes of those who make the laws. But under the present setup, the majority of those who get themselves elected to seats in a state legislature expect to be rewarded for their services beyond the salary and honor attached to their office. It would not be fair to say that they have no interest in the public weal; certainly many of them would be very indignant if they were charged with being corrupt. Nevertheless, they want public jobs either for themselves after the legislature has adjourned or for their friends, relatives, and political supporters at once, and they see nothing out of the way in expecting the governor to assist them if he wants their support.

Of course, such a system does not encourage the highest stand-

ards in government, for it necessitates the substitution of political jack-of-all-trades for professionally trained persons and the paying of high prices for what is actually received by the state, but it has to be taken into account by those who view government realistically. There are, it should be added, degrees of observance of the rules of patronage. A governor of great personal ability and leadership who looks toward the achievement of an ambitious constructive program may find it possible to ignore patronage controls except in extreme cases, substituting the pressure of public opinion and his own personal dominance to whip the legislators into line. On the other hand, a governor of mediocre ability and very little skill as a popular leader who is the creature of the political organization and concerned primarily with keeping his seat will probably handle virtually everything on a patronage basis.

Special Sessions If a regular session of a state legislature refuses to dispose of a matter which the governor considers of first-rate importance or if unexpected problems arise which require immediate attention, a chief executive may summon a special session. In this connection some states authorize the governor to specify what items are to be considered by the special session and no other matter can then be dealt with. If a legislature meets for months every year, as in New York, special sessions are sometimes regarded as helpful in bringing the legislature into co-operation with the governor, but they are less important than in those states which prescribe a legislative session of not to exceed sixty days every other year. The record of the several states is quite diverse in this respect; yet it may be said that considerable use is made of the power to summon special sessions.[14] On occasion the recalcitrance of the lawmakers may continue throughout one of these extraordinary sessions, but there is enough limelight focused on the legislators to encourage reasonable responsibility. In most cases a compromise will be achieved, even if the recommendations of the governor are not followed in full.

Veto Power All of the states, with the single exception of North Carolina, confer on their governors the power to veto certain actions of the state legislature. The exact scope of this power, however, varies somewhat from state to state. Approximately three fourths of the states follow the national example and require a

[14] See Chap. 32.

two-third vote on the part of both houses of the legislature to override a veto, but other states make the veto barrier less of a hurdle, even to permitting repassage by an ordinary majority.[15] About half of the states make provision for the pocket veto of bills in case of legislative adjournment. All ordinary bills are presented to the governor for approval and he may sign them, permit them to remain on his desk without action for a specified period[16] in which case they usually become law without his signature, or refuse to sign and return them to the house in which they originated with his reasons for opposition. At the conclusion of a legislative session, particularly in those states which have rigidly limited sessions, an immense quantity of proposed legislation is usually awaiting the action of the governor because of the fondness displayed by the lawmakers for delaying final action until the closing days. About three fourths of the states lay down definite rules in regard to the time which the governor may have to dispose of these accumulated bills and resolutions after the legislature adjourns. And it may be added that there is a wide range of practice, with three days being considered adequate in certain cases and as long as thirty days being given in others. Even if a state is generous in this respect a governor will find it almost impossible to give detailed consideration to every bill; consequently he ordinarily picks out those which he regards as particularly important either because he favors or opposes them, calling upon the attorney general for an opinion, consulting advisers, and otherwise trying to make up his mind. The remainder are permitted to die under the pocket veto if that provision is made; they are vetoed without careful consideration on general principles of caution; or they are permitted to become law because they are not emphatically opposed.

The Itemic Veto More than three fourths of the states depart from the federal practice and give their governors an itemic veto. This may extend to all bills, as in Washington and South Carolina, but it ordinarily includes only appropriation measures.[17] Legislatures have not impressed the general public on the score of

[15] Thirty-five states require two thirds of those elected or present; Alabama, Arkansas, Kentucky, Connecticut, Indiana, New Jersey, Tennessee, and West Virginia require only an ordinary majority to override the governor's veto.

[16] This period varies from three to ten days.

[17] All but eleven states confer the itemic veto on their governors.

financial responsibility and hence there has been this widespread resort to gubernatorial veto of individual items. The itemic veto imposes a very heavy burden upon the governor if it is exercised with any degree of care. The financial systems of most of the states are now so complicated and require such large sums of money that it is literally impossible for a chief executive to go over every item in the various appropriation bills. But he may ask the budgetary officials to advise him as to items which are especially objectionable and if he is charged with overseeing the preparation of the budget himself he will have considerable familiarity with the main requirements of a sound financial plan.

Use of the Veto Like the President, governors frequently obviate the necessity of a direct use of the veto power by letting it be known beforehand that they strongly oppose certain legislation. Legislators, being human, do not like to have their efforts exposed to ridicule and hence frequently will desist from passing a bill if they know that the governor will veto it. Of course, if the state permits repassage by a bare majority vote, there may be less disposition on the part of the legislature to be deterred by a threat than where a two-thirds majority is specified. Much also depends upon whether the majority in the legislature and the governor belong to the same political party as well as whether there is a disposition to avoid open warfare. Governors make distinctly more use of the veto power itself than the President. Indeed where the national executives veto a fraction of 1 per cent of all bills passed by Congress, governors sometimes veto 25 per cent or even more of the work of a state general assembly. The record of the states is strikingly divergent in this respect. One or two vetoes during each legislative session may be all that certain governors find it necessary to make—indeed during more than half a century the Illinois chief executive exercised this power on only two occasions. At the other extreme are governors who refuse to approve two or three hundred bills in a single year.[18]

6. Military Functions During a period of national emergency, when the National Guard has been called into active service by the President and perhaps incorporated into the national Army to such an extent that it virtually loses its identity, the governor

[18] New York, California, Pennsylvania, and Virginia are among the states with the highest veto rate during recent years.

has little to say about its use. However, he is likely to be given certain responsibilities in connection with raising an army; for example, he was authorized to appoint local boards for administering the selective service system. The provisions made by the forty-eight states as to the wartime powers of their governors vary widely, but in general they are sufficiently ample. Governors have more or less complete supervision of civilian defense within their states and appoint state defense councils which draft elaborate programs designed to protect property and persons, conserve supplies, encourage industrial production of war supplies, bolster morale, coordinate the efforts of various public and private agencies, and educate the people as to the necessities of war. In the absence of a national emergency the governor ordinarily serves as commander in chief of the National Guard of his state, although he will usually have an adjutant general to relieve him of the routine responsibility. His chief function in this field relates to the use of the National Guard for maintaining law and order during times of floods, earthquakes, fire, or other catastrophes and in connection with labor disputes.

7. *Relations with Other Governments* The office of the governor is the main channel of communication between the state and the national government. Proposed amendments to the national Constitution are transmitted to a state through the governor; he in turn notifies the national Secretary of State as to what action has been taken by his state on amendments. When the national government desires to enlist the aid of the states in meeting a situation, such as removing barriers to a free flow of commerce from one part of the United States to another, it addresses its request to the various governors. The states necessarily have a good many relations with one another. Some of these involve direct negotiation by officials in one department with officials of the corresponding department in another state. The creation of commissions on interstate co-operation in most states has marked an important step forward in interstate relations.[19] Nevertheless, governors continue to have several duties in this connection. We have already noted that they have important functions in connection with returning fugitives from justice to the state in which the alleged crime was

[19] See Chap. 5.

committed.[20] Governors may institute proceedings of a legal nature against another state which seems to threaten harm, although the actual conduct of this litigation will usually be entrusted to the attorney general and his assistants. Finally, the forty-eight governors are members of the Conference of Governors which meets at least once each year for the purpose of discussing current problems of interest to the states in general.

THE LIEUTENANT GOVERNOR

Three fourths of the states provide lieutenant governors who are chosen in the same manner and must possess the same general qualifications noted in the case of the governor. It might be supposed from their title that these officials would be charged with assisting the chief executive, but this is not the actual situation in most instances. Lieutenant governors succeed to the post of governor in cases where the person elected to that position dies or is entirely incapacitated; they may take over the responsibilities of the office temporarily if the chief executive has to absent himself from the state for any purpose, though this is not always the case. The chief function of the lieutenant governor in most of the states where he is encountered is to serve as presiding officer of the senate, and hence he is ordinarily occupied in public duties only a comparatively short time every two years. However, Indiana has made him a full-time state employee, giving him the headship of one of the major administrative departments.

Selected Bibliography

Alexander, M. C., "Development of the Power of the Executive of New York," *Smith College Studies in History*, 1917, pp. 148-233.

Arnall, E. G., *The Shore Dimly Seen*, J. B. Lippincott Company, Philadelphia, 1946.

Bates, F. G., and O. P. Field, *State Government*, rev. ed., Harper & Brothers, New York, 1939, Chap. 10.

Book of the States, The, current volume, Council of State Governments and American Legislators' Association, Chicago.

Bromage, A. W., *State Government and Administration in the United States*, Harper & Brothers, New York, 1936, Chap. 8.

[20] See Chap. 5.

Cheek, R. S., *The Pardoning Power of the Governor of North Carolina,* Duke University Press, Durham, 1934.

Dodd, W. F., *State Government,* rev. ed., D. Appleton-Century Company, New York, 1928, Chap. 8.

Graves, W. Brooke, *American State Government,* rev. ed., D. C. Heath & Company, Boston, 1946, Chap. 10.

Holcombe, A. N., *State Government in the United States,* rev. ed., The Macmillan Company, New York, 1931, Chap. 11.

Jensen, C., *The Pardoning Power in American States,* University of Chicago Press, Chicago, 1922.

Lipson, Leslie, *The American State Governor,* University of Chicago Press, Chicago, 1939.

Macdonald, A. F., *American State Government and Administration,* rev. ed., The Thomas Y. Crowell Company, New York, 1945, Chaps. 8-9.

Mathews, J. M., *American State Government,* rev. ed., D. Appleton-Century Company, New York, 1934, Chap. 12.

Patterson, C. P., *American Government,* D. C. Heath & Company, Boston, 1933, Chap. 34.

Rohr, C. J., "The Governor of Maryland; A Constitutional Study," *Johns Hopkins Studies in History and Social Science,* Vol. L, pp. 303-475, The Johns Hopkins Press, Baltimore, 1935.

31 · *The State Legislature*

Although there has been a general curtailment of legislative freedom and a widespread disposition to distrust the integrity of individual legislators, the state legislature remains a vital part of American state government. Indeed despite the numerous prohibitions directed at this branch of government in most of the states, it should be pointed out that legislatures have never been busier than they are at present. They receive more proposals looking toward action of one kind and another, enact more statutes, and appropriate more money than during the early years of the republic when they had greater prestige and a distinctly freer hand —an interesting paradox.[1]

BICAMERAL VERSUS UNICAMERAL LEGISLATURES

During the early history of the states there was some difference of opinion as to whether bicameral or unicameral legislatures were preferable. Gradually the sentiment shifted in the direction of the bicameral arrangement, although it was not until about the middle of the nineteenth century that the last single-chamber legislature was revamped into the traditional model. By the beginning of the twentieth century a considerable amount of support was to be observed in favor of the unicameral system and it seemed that Kansas might actually establish such a legislature. Then World War I came along to distract attention from domestic affairs, with the result that the unicameral movement suffered a severe setback. However, after times had become somewhat normal the sentiment

[1] Professor R. V. Shumate expresses the rule thus: "But even a partial enumeration of the functions which are still performed by the states should convince an objective student that the state legislature is as important now as it ever was, and that it will remain important as long as we retain even a vestige of the federal system." See his article "A Reappraisal of State Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 196, January, 1938.

again surged forth and Nebraska decided to introduce a single-chamber legislative body

Arguments for the Bicameral System The bicameral legislature has so firmly entrenched itself in the American political scene that it is almost taken for granted by the rank and file of the people. The very acceptance of this form by all of the states for almost a hundred years and by all of the states except Nebraska at present may be regarded as an argument in its favor. This system follows, of course, the pattern which has characterized the national legislative branch since the very beginning. It is supposed to permit broader representation than is possible under a unicameral arrangement.

Arguments for the Unicameral System Most of the arguments in favor of the unicameral system arise out of experience with the bicameral plan.[2] It is declared that the latter in reality does not involve broader representation because there is little actual basis for such a duality in the states. In the national government the Senate gives recognition to the individual states, while the House of Representatives is primarily based on population. However, there is no unit of government within a state that can be regarded as sufficiently outstanding to warrant representation in an upper house, although the county is sometimes given greater consideration in laying out districts for the election of senators than in the case of representatives. Moreover, a provision is sometimes set up which gives urban areas their fair share of seats in one house, but limits a single metropolitan area to a definite number of places or a certain proportion of seats in the other.[3] But in general there is little difference between the senate and house on the score of representation. Any one who has had experience in a legislative session knows that the bicameral system sets up two barriers to be hurdled and that a bill may go over one hurdle but fail to get over the second.

To what extent two houses make for more careful consideration of legislative proposals it is difficult to determine. No one can doubt that all too much objectionable legislation manages to get

[2] These are discussed in Alvin Johnson, *The Unicameral Legislature*, University of Minnesota Press, Minneapolis, 1937.

[3] Large cities are notoriously underrepresented in state legislatures, particularly in one of the two houses. New Jersey, Georgia, New York, and California may be cited as examples of states which permit grave discrimination.

enacted under the bicameral system. The passage of contradictory legislation in a single session does not suggest any large amount of responsibility or even familiarity with what takes place. Occasionally a second chamber actually serves to hold up important legislation that is desired by the majority of the people. The unicameral setup does not prevent the former confusion, but it rules out a deadlock between two chambers. In theory, at least, the single-chamber legislature saves the people money because only one set of employees has to be maintained, and the number of members will in all probability be reduced. Passing of the "buck" from one chamber to the other is, of course, obviated, as are deadlocks and domination of one house by one political party and of the other by a rival party. It is maintained that public attention is focused more sharply on the single chamber, that a superior type of member is attracted, and that the newspapers report what goes on more fully. Cities in the United States which once almost invariably had bicameral councils, now seem to get along better with unicameral councils. The query is raised whether states might not have the same experience with unicameral setups.[4]

The Nebraska Record The first unicameral legislature of the present century convened in Nebraska in 1937. A period of about a decade does not permit a conclusive evaluation, but it is possible to make certain observations.[5] To begin with, it may be stated that the people in Nebraska are not agreed as to the accomplishments or lack of accomplishments of their new system. Some of those who have served as members have been very enthusiastic, while one governor of the state has been distinctly critical, even to the point of speaking against the plan in other states. It is probable that the caliber of members is somewhat higher than under the older arrangement, but this may be due to the novelty.[6] Newspaper reporting has apparently been somewhat disappointing, the newspapers maintaining that much of what goes on is not of great in-

[4] See Howard White, "Can Legislators Learn from City Councils?" *American Political Science Review*, Vol. XXI, pp. 95-100, February, 1927.

[5] Professor J. P. Senning of the Department of Political Science at the University of Nebraska has discussed the Nebraska experience, especially the preliminary stages, in his *The One-House Legislature*, McGraw-Hill Book Company, New York, 1937.

[6] Early elections under the commission and council-manager plans of city government have brought forth abler candidates than later presented themselves. This may be the case in the unicameral state legislatures also.

terest to their readers. Some economies have been realized, although the amount is not large in comparison with the total expenditures of the state. The quality of legislation is at least as high as formerly and proponents of the scheme would say distinctly higher.

MEMBERSHIP

Size There is no uniformity among the states so far as the size of the general assembly is concerned.[7] With as great a diversity in population as is to be observed, this should not be expected, but it is somewhat strange that populous states sometimes maintain smaller legislatures than their more sparsely inhabited neighbors. The smallest senate is to be found in Delaware and numbers only 17; the largest is in Minnesota and includes 67 members; the average senate has 38 members. The lower houses vary even more widely in size. Delaware and Nevada get along with 35 and 40 representatives each, while New Hampshire, at the other extreme, has just under 400—399 to be specific. Many lower houses run from 75 to 150 in membership. There is no fixed size that may be laid down as desirable for every state. Something depends upon the type of local government; the diversity of interests among the people may be considered in determining the number of seats. In general, it is the consensus of opinion that legislative bodies in states tend to be unduly large, though in most cases their unwieldiness is not pronounced.

Method of Selection As a rule, members of legislative bodies in the states are nominated by one of the forms of direct primary,[8] though in a few states the convention is still employed for this purpose. Interest may be great and a half dozen or more candidates may present themselves for designation in each of the parties, but it is not at all uncommon to find districts in which the nomination is more or less bestowed by default on a candidate. The political organizations frequently put up informal slates which include members of the legislature and this makes it difficult in some places for an independent candidate to make an impressive

[7] A table showing sizes of the various legislatures will be found in the current *Book of the States*, Council of State Governments and American Legislators' Association, Chicago.

[8] For a fuller discussion of the direct primary, see Chap. 10.

showing. In the states of the South where the Democrats have a monopoly the actual choice is made at the primaries and the final election is little more than a formality.

Apportionment Legislators are usually chosen to represent districts within a state. These may be based on such local governments as townships and counties or they may be laid out with little reference to these divisions, but it is customary to pay at least a reasonable amount of attention to county lines.[9] Both single-member districts and multiple-member districts are to be encountered, with the latter usually, except in Illinois, limited to urban areas. Separate districts are provided for senators and representatives because of the different numbers to be elected. Each district, if of the single-member variety, is supposed to have substantially the same number of inhabitants, but in reality there is a great deal of variation. Urban sections are often discriminated against to the point where they may have distinctly less than the proportionate representation that their populations would seem to entitle them.[10]

Proportional Representation The shortcomings of the traditional method of electing members of state legislatures are reasonably serious. Not only is there the discrimination against urban areas, but even rural inhabitants may find themselves with distinctly less representation than they are entitled to on the basis of their numbers because of gerrymandering or the giving of representatives to every county irrespective of population. Minority parties discover that they may poll almost as many votes as the majority party, but actually elect only a small fraction of the members of the general assembly. Proportional representation has been proposed as the most practical method of handling the problem,[11] though it has been blamed by Professor F. A. Hermens for many of the ills of Europe as well as some of the weaknesses of

[9] For a table showing apportionment requirements of the various states, see the current *Book of the States*.

[10] See David O. Walter, "Reapportionment and Urban Representation," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 11-20, January, 1938.

[11] See, for example, C. G. Hoag and George H. Hallett, Jr., *Proportional Representation*, rev. ed., National Municipal League, New York, 1940; J. P. Harris, "Practical Workings of Proportional Representation in the United States and Canada," supplement to *National Municipal Review*, Vol. XXIX, May, 1930.

New York City, Cincinnati, and the small number of other cities which use it.[12] Two general types of "P. R.," as proportional representation is usually designated, have been developed: the List system and the Hare system. The former is the European variety, while the latter is the type used in the cities of the United States which have seen fit to adopt this system.

The List System The List system gives open recognition to political parties, permitting them to put up slates of candidates which appear on the ballot. Each party is rewarded with seats on the basis of the percentage of votes polled in the election; thus a party whose supporters account for 30 per cent of the total vote would receive three out of ten positions, if that number of seats were being filled, a party with 20 per cent would be entitled to two positions, and so forth.

The Hare System The Hare system is more complicated, but it is regarded as superior by most P. R. advocates in the United States. Instead of extending recognition to political parties it seeks to encourage voting on the basis of economic, social, racial, and other types of interest, though it has by no means put an end to party candidates. Each voter is given only one vote, but this vote is transferable, the principle being that no vote is to be thrown away and that every voter is to help elect one officer.

Terms At one time it was the custom to elect members of legislatures for a single year and New Jersey only recently has given up annual elections for those who sit in its lower house. However, representatives now ordinarily hold office for two-year terms, while more than half of the states at present choose their senators for four-year terms. A few states, including Alabama, Louisiana, Maryland, and Mississippi, have gone so far as to give members of their lower chambers four-year terms; a much larger number of states continue the older practice of two-year terms for senators.[13]

Re-election Re-election is permitted and in many cases is actually granted, although there is no uniformity among the states

[12] See his *Democracy or Anarchy? A Study of Proportional Representation*, Review of Politics, Notre Dame, 1941. New York City has recently abandoned P.R.

[13] Thirty-one states provide four-year terms for senators.

or even within a single state in this matter.[14] In some states the principles of Jacksonian democracy even now find a warm welcome, with the result that there is a feeling that no one should hold a seat in a general assembly more than a brief period. The practice in these states emphasizes the importance of passing the honors around so that every citizen of substance may get his turn at some office. Other states are more cognizant of the bearing of legislative experience upon superior legislative record and consequently re-elect both representatives and senators again and again. A study made a few years ago showed that every senator in Maryland had had previous legislative experience and 93 per cent of the representatives fell into the same category; Illinois could point to 94 per cent of her senators and 75 per cent of her representatives as having had previous legislative experience, and New York reported 90 and 78 per cent respectively on the same basis. At the other extreme stood Georgia, with only 35 and 47 per cent respectively of her legislators old hands at the game, and New Mexico, with but 42 and 31 per cent of her senators and representatives with previous legislative experience.[15]

Importance of Experienced Legislators It is hardly necessary to point out the importance of experienced legislators under a system such as exists in the states of the United States. The business entrusted to a legislature is often highly complicated and requires far more than the novice can offer. The rules tend to be involved; the pressure of time is tremendous in many states that have strictly limited sessions. Even experienced members find it difficult to function efficiently under such circumstances, while beginners can scarcely do more than observe what is going on.

Qualifications The formal qualifications which are laid down by the states for members of the general assembly are largely nominal in importance. In every case a minimum age of twenty-one is stipulated and in some instances, especially in the case of senators, minimum ages of twenty-five or thirty years are required. Residence of at least one year is asked; citizenship in the United

[14] See Charles S. Hyneman, "Tenure and Turnover of Legislative Personnel," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 21-31, January, 1938.

[15] See Henry W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 5, January, 1938.

States is, of course, always specified. Persons who have been convicted of felonies may be disqualified. In a few instances ability to use the English language is specifically demanded, although in New Mexico a considerable number of the legislators understand only Spanish and hence have to have interpreters at hand.[16] Needless to say, there are more arduous qualifications which are imposed by custom and usage. Lengthy residence is almost taken for granted in most states; political backing is certainly very helpful if it is not an absolute qualification.

Compensation There is a disposition among members of state legislatures to ask for sympathy on the ground of low compensation. Several writers have used the financial allowances made to lawmakers as an explanation of the poor quality of work turned out, particularly suggesting that it is responsible for the unimpressive record of previous legislative experience to be observed in some states. A casual glance at the compensation allowances will indicate that the direct payments are not strikingly generous. Illinois and New Jersey lead the list, paying biennial salaries of $5,000 and $6,000 respectively. At the other extreme are such states as Kansas and Tennessee, which allow their legislators only $3-4 per day during the period that the legislature is actually in session and New Hampshire which pays $200 per term. The expenses incident to living in a state capital may exceed the compensation paid by many of the states, unless the legislator is willing to take a room in a boarding house and restrict himself to the most simple tastes.

Relation of Salary to Turnover and Ability Nevertheless, after due commiseration has been extended to the citizens who occupy seats in our state legislatures, it is probable that the significance of the problem has been overemphasized. Oregon, which pays only $8.00 per day, has approximately the same rate of turnover among her legislators as Pennsylvania which is fairly generous, and actually is superior to Ohio which pays third from the highest salary.[17] It is perhaps true that a state should be humiliated to pay

[16] For an interesting article on this, see John C. Russell, "Racial Groups in the New Mexico Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 62-71, January, 1938.

[17] The record of Oregon as of 1937 was 70 per cent of experienced members in case of senators and 52 per cent for representatives. Pennsylvania in the same years reported 68 and 57 per cent respectively, while Ohio could point to only 53 per cent in both cases.

lawmakers at so modest a rate in light of the amounts authorized for other purposes no more important; yet it is difficult to relate compensation to work performed. If members cannot afford to devote the time required for the salary paid, it would seem that they would not seek re-election. Doubtless there are many individual cases where this actually happens, but in general salary does not appear to determine the rate of turnover. To what extent it influences the quality of the members it is difficult to say. Are honest citizens discouraged from serving, while rogues who are willing to sell their support to the highest briber encouraged to seek seats? No one can speak with absolute authority on this point, although many people have expressed opinions. It would seem that the prestige attached to legislative membership is fully as important as the monetary compensation involved.

Divergent Attitudes Toward Legislative Membership Despite the suspicion of John Q. Public which has been crystallized in numerous prohibitions written in state constitutions and the ridicule of the press, it seems probable that there is still considerable prestige attached to legislative service. The ordinary legislator does not read learned treatises which deal with the deterioration of the general assembly; nor does he necessarily take too much to heart what the newspapers print. He is far more conscious of the attitude of the people at home with whom he associates daily, of the agents of the pressure groups which seek his support, and of the public officials at the state capital who desire generous appropriations. They are apt to treat him with respect and in many cases will bestow the most fulsome praise. It is in the circles of the successful business and professional men that the legislature is made fun of and consequently that prestige value is low. Yet it is from these groups that a reasonably large number of recruits are needed for legislative service.

The Honesty of Legislators A legislature may appropriate public funds to the extent of tens and even hundreds of millions of dollars;[18] moreover, it has the power to enact statutes that may be worth millions of dollars to private interests. Under these circumstances it is very important that every member be like Caesar's wife, "above suspicion." Even a minority of corrupt legislators may cause a state untold trouble, since a comparatively small group may

[18] New York State spends approximately one billion dollars per year.

hold the balance of power and determine what shall be done. To what extent dishonesty prevails in a single general assembly it is difficult to ascertain; it is much more difficult to lay down any general conclusion that would hold true in the case of all legislatures throughout the United States. There is a belief in many circles that dishonest legislators are for the most part confined to the past, but unfortunately this is hardly the case. A keen observer who has been associated with legislatures over a period of more than a quarter of a century declares that at any given time it is safe to say that from one fifth to one fourth of the members are willing to sell their votes. This does not mean that they are always corrupt in their conduct, but it does imply that they cannot be depended upon to stand up under great temptation. Certain members, on the other hand, are rampant in their grafting and welcome every opportunity to profit at the expense of the public; if everything goes well they may pocket $10,000 or more during a single session. It might be supposed that the corrupt-practices laws would prevent such conduct on any considerable scale, but it is difficult to prove guilt, even when there is a courageous prosecutor to handle the case.

Conflicting Opinions as to Adequacy of Legislators The newspapers often hold legislatures and their members up to ridicule —even as sober a paper as the *New York Times* came out not long ago with the following headline "Georgia Hails End of Its Legislature. Body, Called Most Incompetent in Forty Years, Applauded for Adjourning." Alfred E. Smith implied in his autobiography that he was one of the rare members of the lower house of the New York legislature to take their duties seriously;[19] he spent his evenings reading bills and attempting to secure information from reliable sources as to the merit of proposed legislation, while his colleagues loafed, gambled, and amused themselves after the daily sessions came to an end, content to take their cue from a pressure group or the party leaders. Charles Kettleborough, for a quarter of a century closely observant of the legislature in Indiana which is noted for its practical politics, arrived at a very different conclusion: "My experience with eleven sessions in Indiana has convinced me that an average legislature is not only a very able but a very serious body of public servants and that they are entitled to in-

[19] See his *Up to Now*, The Viking Press, New York, 1929, Chaps. 5-8.

dulge in the nonsense they do to maintain their poise and good humor and equilibrium." [20]

Selected Bibliography

Bates, F. G., and Oliver P. Field, *State Government*, rev. ed., Harper & Brothers, New York, 1939, Chap. 7.

Bromage, A. W., *State Government and Administration in the United States*, Harper & Brothers, New York, 1936, Chap. 9.

Book of the States, Council of State Governments and American Legislators' Association, Chicago, published biennially.

Crawford, F. G., *State Government*, Henry Holt & Company, New York, 1931, Chap. 7.

Graves, W. Brooke, *American State Government*, rev. ed., D. C. Heath & Company, Boston, 1946, Chap. 7.

——, ed., "Our State Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, January, 1938.

Holcombe, A. N., *State Government in the United States*, rev. ed., The Macmillan Company, New York, 1931, Chaps. 10, 16.

Johnson, A. W., *The Unicameral Legislature*, University of Minnesota Press, Minneapolis, 1938.

Legislative Apportionment, Bureau of Public Administration, University of California Press, Berkeley, 1941.

Legislative Manuals, published biennially by a number of the states.

The Legislature of California, Commonwealth Club of California, San Francisco, 1943.

Luce, Robert, *Legislative Assemblies*, Houghton Mifflin Company, Boston, 1924, Chaps. 2, 5, 10-16.

Macdonald, A. F., *American State Government and Administration*, rev. ed., The Thomas Y. Crowell Company, New York, 1945, Chap. 6.

Mathews, J. M., *American State Government*, rev. ed., New York, D. Appleton-Century Company, 1934, Chaps. 9-10.

McHenry, D. E., *A New Legislature for Modern California*, Haynes Foundation, Los Angeles, 1940.

Utecht, B. C., *The Legislature and the Texas People*, Naylor Company, San Antonio, 1937.

Walker, Harvey, *Law-making in the United States*, The Ronald Press Company, New York, 1934, Chaps. 8, 19.

[20] In a letter to Professor Graves, November 1, 1934.

32 · *The Legislature in Action*

SESSIONS

Frequency of Sessions At one time it was customary for legislatures to convene every year, but that has long since ceased to be the rule. Indeed there are only five states in which annual sessions are still provided: New York, New Jersey, Rhode Island, Massachusetts, and South Carolina. The legislatures of forty-three states meet every two years in regular session.[1]

Limitations upon Length of Session While the distrust which has been generated by legislative action has led to constitutional limitations on the duration of regular sessions in certain states, there are still twenty-three states which permit their law-making bodies to meet as long as they deem necessary. The twenty-five states which are not willing to grant discretion as to length of session to their legislatures are not agreed upon how severe a limitation shall be imposed. One goes so far as to set the maximum at 40 days; one state specifies 61 days; two, 90 days; and one, 150 days. The most common practice is to set the limit at sixty days—seventeen states hold to this course. The average of the limited and unlimited sessions runs to approximately ninety days at present.[2]

Problem of the Limited Session The limitations which are imposed by twenty-five states on the length of regular legislative sessions may or may not work undue hardship. The 150 days permitted by Connecticut is reasonable enough, for it is hardly to be expected that the legislature of that state could under ordinary

[1] These legislatures do not meet the same year; thirty-nine meet in odd-numbered years and four in even-numbered years. A table showing length of sessions, and so forth, will be found in the current volume of *The Book of the States*, Council of State Governments and American Legislators' Association, Chicago.

[2] See Henry W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 1, January, 1938. In 1937, forty-three sessions averaged ninety-one days.

circumstances wisely spend more than that time on its deliberations. Maryland and Minnesota, which set the maximum at ninety days, also cannot be fairly considered unreasonable, unless a very unusual situation presented itself. The other twenty-two states are in a different category. It cannot be maintained that two months every two years is always an inadequate time for a legislature to complete its labors, but it is certainly very frequently not sufficient. The result is that the legislatures of many states come to the last week of their limited sessions with very little accomplished in the way of statutes finally enacted.[3] Inasmuch as there are many bills and resolutions that simply have to be passed in order to keep the government going, the congestion during the closing days is almost beyond description. The result is that two or three conflicting bills may be passed; freak bills get through; very important bills find themselves passed without clauses which make it possible to enforce them; and the governor is confronted with such a mountain of bills and resolutions at the very end that it is literally impossible for him to give careful consideration to those which are not particularly demanding. One may sympathize with the trials and tribulations which some states have suffered as a result of irresponsible legislatures, but the remedy which has been adopted often involves so many evils that it is questionable how much good has been accomplished.[4]

Split Sessions The constitutions of California and New Mexico provide for bifurcated or split sessions. On the ground that it is desirable to permit time for considering the bills which are introduced in such large numbers as well as to sound out popular

[3] Mr. Garland C. Routt, of the Council of State Governments, has pointed out that the congestion at the end of a session is not entirely due to the inability of the legislature to transact business more promptly, although this enters in. But in many instances he maintains that legislators are uncertain as to what is politically expedient, while in other instances they prefer to have their measures pass during a period when so much else is being done that the limelight will not be focused on their endeavors. These points were made in an address delivered to the Midwest Conference of Political Scientists held at Pokagon State Park in Indiana in May, 1941. See also his "Interpersonal Relationships and the Legislative Process," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 129-136, January, 1938.

[4] Yet limited sessions have their strong supporters. A senator of considerable reputation and experience in a middle-western state has informed the author that he whole-heartedly approves of the sixty-one day limit in his state.

sentiment, these states provide an arrangement under which the legislature meets for an initial period during which bills are introduced and preliminary business is attended to. Then a recess of several weeks is taken, during which the members return to their homes, determine the attitude of their constituents on pending bills, and otherwise inform themselves as to what final action should be taken on the proposals which have been made. At the conclusion of this period the legislature convenes again and proceeds to pass those bills and resolutions which it regards as desirable. In California the split session is not popular with either legislators or scholars. It causes a prerecess rush somewhat like the preadjournment rush at the end of a session and has not produced a higher quality in laws passed.[5]

Special Sessions Recent years have witnessed numerous special sessions of state legislatures. In 1929, which marks the dividing line between the predepression days and the difficult years of the 1930's, only nine states scheduled special sessions. But in the single depression year of 1933 thirty-five states held forty-three special sessions of their legislatures. The following year twenty-eight states called thirty-eight special sessions, while in 1936 thirty-three states set an all-time high with forty-six special sessions. By 1937 the situation had quieted down and since that time the need for special sessions has been less pressing. Nevertheless, in those states which limit their lawmaking bodies to two months or less every two years special sessions are likely to be fairly common occurrences. As a result of wartime problems almost all of the legislatures held special sessions in 1944.

ORGANIZATION

Inasmuch as there is usually a long lapse of time between legislative sessions and the turnover in membership is large, especially in certain states, state legislatures find it necessary to pay more attention to organization than does Congress.

Preliminary Steps As soon as the election returns have indicated the membership of a state legislature, the leaders of the majority party begin to lay plans for the organization of that body. It is quite possible that a caucus of the members of the dominant

[5] For an evaluation, see T. S. Barclay, "The Split Session of the California Legislature," *California Law Review*, Vol. XX. pp. 43-59, November, 1931.

party in the legislature will be held sometime during December for the purpose of discussing officers, committee assignments, and other matters of interest. However, if there has been no shift in party control and many of the old members have been re-elected, no definite steps may be taken until the very eve of the convening of the legislature. At any rate a slate of officers is usually in readiness for consideration at the first formal meeting and this is ratified as a matter of course by the assembled members. During the first session the oath of office is administered to members, seats are assigned, and other preliminaries are disposed of. Shortly after convening, the governor is invited to address a joint assemblage of the members of the two houses or, if he prefers, to send in a message to be read by the clerks of the two houses.

Officers State legislatures have officers similar to those in Congress. The lower houses are presided over by speakers who receive their positions because of their leadership in the majority party; as in the national House they do not hesitate to take an active part in the affairs of the chamber over which they preside. In all of the states except Oklahoma and Nebraska [6] the speaker continues to name committees. Thirty-six of the states have lieutenant governors who preside over the senate, but in twelve cases the senate has to choose a president for that purpose.[7] Presiding officers maintain order during the sessions, recognize those who desire to speak, listen to motions, rule on points of order, and perform the other duties which are commonly associated with a presiding officer. Chaplains, sergeants at arms, several varieties of clerks, and other officials carry on the functions which are traditionally expected.

The Role of the Caucus A caucus of the majority members in a legislative body is almost always held immediately before or at the beginning of a new session for the purpose of selecting officers, employees, and committee personnel. Minority caucuses have little control over organization, but they pride themselves on putting up a slate of officers and usually have something to say about the committee assignments of their members. At the majority caucus meetings considerable attention is likely to be paid to outlining

[6] Oklahoma and Nebraska have a committee on committees for this purpose.
[7] These states are: Arizona, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, and Wyoming.

the general strategy, as well as to the program of legislation. In general, the work of a state legislature is less political than that of Congress, since large numbers of bills involve local desires or economic interests rather than party concerns. Thus both Democrats and Republicans from rural areas vote for a bill supported by the rural voters, while their colleagues from cities see eye to eye on a measure sponsored by urban interests. This means that the role of the caucus may not be important after the legislature actually gets under way. However, there are times when a majority party will draft a very ambitious legislative program. The steering committee appointed by the caucus may have a great deal to do if there is something of this kind on hand, for it has to see that members are present to vote and that the plans go according to schedule.

Committees There are several types of committees which are organized by state legislatures. Standing committees are found everywhere and are ordinarily maintained by each house. Special committees are named to attend to matters which are of temporary interest; ad interim committees which carry on studies between legislative sessions are particularly important at times.

Standing Committees Much of the actual work of a legislature is carried on by standing committees which are set up to consider bills of various sorts. There has been a trend in the direction of reducing the number of committees during recent years, but there is still room for a good deal of pruning in many states. A few states, including Wisconsin, Nebraska, and Kansas, have brought the number of committees at least in one house to reasonable proportions—having from ten to sixteen committees each. In contrast ten senates have forty or more standing committees each, while nine lower houses have fifty or more standing committees. There are not forty or fifty different categories of bills which are important enough to justify standing committees and as a result, while a few committees have much to do, a larger number find themselves with little or nothing to occupy their attention. But members want to be appointed chairman of a committee irrespective of whether it is important or not; moreover, they like to be able to point to membership on numerous committees.

Joint Committees Two states[8] have largely abandoned standing committee systems in both houses for joint committees,

[8] Massachusetts and Maine.

while four additional states [9] have made some headway in this direction. Under this arrangement a single committee, with members drawn from both chambers, considers proposed legislation after introduction and reports to both houses when it has finished its labors. In this way one consideration rather than two is provided; time is saved; representatives of both houses often iron out their differences of opinion before a formal vote is taken rather than after. The joint committee system is supposed to confer many of the benefits of unicameralism without necessitating the constitutional changes required by that form. It has received generous attention from students of government and has worked out well in Massachusetts where it has had its most extensive use.

Ad Interim Committees It is the custom in many states to set up special committees to study some particular problem during the period between legislative sessions. These may represent a single house; they may draw members from both houses; or they may include both legislators and persons drawn from the outside. They are ordinarily authorized by resolution and frequently are the pet project of some one member of a legislative body—the author of a resolution usually is automatically appointed to membership and may be made chairman. Some of these committees have been of first-rate importance in gathering together material which has later been made the basis for far-reaching legislation. Unfortunately the record of many of these ad interim committees is less bright, though they may have cost the taxpayers thousands of dollars. In a good many cases the main purpose seems to be to provide funds for a junket, to employ a politically deserving person as secretary, or to attract publicity to the sponsor.

The Legislative Council Realizing the need for a continuing agency to study the complicated problems with which a legislature must deal, numerous states have established legislative councils. Kansas and Michigan created councils in 1933 and seventeen other states including Nebraska, Ohio, Illinois, Maryland, Pennsylvania, Maine, Missouri, Indiana, and Alabama took similar steps during the years prior to 1948. Michigan abolished its council in 1939, while Rhode Island and Oklahoma, after authorizing legislative councils in 1939, never actually set them up. There is difference of opinion as to how large the council should be—Kansas and Illinois seem to

[9] New Hampshire, New Jersey, North Dakota, and Rhode Island.

be convinced that a comparatively large body of more than twenty [10] members is desirable, while other states prefer a smaller membership of ten or a dozen. The experience of states with legislative councils has been far from uniform. Wisconsin and Michigan, for example, did not have more than a biennium in which to try out the system because of political shifts which brought in unsympathetic state officials. The Kansas and Illinois councils, on the other hand, have operated with distinct success, despite certain difficulties.

Technical Services Although the legislative council idea is quite new, there has been provision made for technical services for almost half a century. In 1901 Wisconsin started a bill-drafting and legislative reference service, while the New York State Library pioneered in a legislative reference division in the 1890's. The several states have followed this lead, until more than forty of them now maintain legislative reference services and public bill-draftsmen. Legislative reference bureaus frequently provide both services to members of the legislature, although there has been a tendency to emphasize the bill-drafting service during recent years.

Bill-Drafting The ordinary member of a general assembly, even if a lawyer, is not trained in preparing drafts of proposed laws, since that requires a considerable amount of technical skill. During the years before public bill-drafters were employed by states, many bills were so poorly drawn that they did not accomplish what they were intended to and sometimes led to considerable public embarrassment, to say nothing of expensive litigation. Even now there are numerous examples of faulty drafting, but there has been a great deal of improvement during the last quarter of a century when experts have been made available for this purpose in most of the states. There is no compulsion attached to this service, although there are good arguments in favor of requiring every bill to meet certain standards. Inasmuch as it is left up to legislators whether they will make use of the bill-drafting services provided, the record of various states is not uniform. In those states where bill-drafters have won the confidence of the legislature, virtually all bills are either drafted in the first place or checked by these technicians. Members who use this service—and it is often the policy to permit private citizens to ask for aid also during times

[10] Illinois has twenty-two members.

when the bureau is not too busy—bring their ideas to the bureau and they are then incorporated into carefully prepared bills.

Legislative Reference Services—Legislative reference services provide library facilities which bear particularly on public affairs and may undertake to compile reports on certain problems for legislators. Those legislators who take their responsibilities seriously may make considerable use of the books, public reports, and other materials available in the legislative reference agency, but the average member is too busy, indifferent, confused, or inexperienced to draw heavily on these facilities. Compilations and summaries may be prepared by the legislative reference services at the request of members. Where the bill-drafting is associated with the reference service, the staff is likely to be more or less exclusively engaged in the former during a legislative session. Hence, while it might appear at first glance that a legislative reference bureau would perform substantially the same functions as a legislative council, this is far from the case in actuality. The former is rather routine in its activities, while the latter is primarily interested in research. The two do not necessarily encroach upon the territory of each other at all, though it is usually regarded as wise to co-ordinate their efforts and even to bring them together under a single director.[11]

RULES

There is considerable diversity in the rules of state legislatures because of local custom and usage. However, much of the difference is of detailed character rather than of basic importance. A careful analysis of the rules of several legislatures will reveal that their fundamental principles have developed over a period of several centuries, often going back to English parliamentary practice. Many of the rules strike the student of modern legislative procedure as not well suited for present-day use; the mere fact that they are suspended so frequently indicates that the members themselves do not regard them as very helpful. To begin with, they are often so complicated that it is difficult for the newer members to familiarize themselves even with those which are most commonly

[11] For a good discussion of these services, see Edwin E. Witte, "Technical Services for State Legislators," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 137-143, January, 1938.

employed. As Governor Alfred E. Smith put it, "The rules of procedure of the assembly were so involved that it was difficult for a newcomer to understand what it was all about. I was diligent in my attendance at the meetings, but I did not at any time during the session really know what was going on." [12] Again they are rigid, despite the exigencies of the current period. Furthermore, they are frequently enormously time-consuming, even in those states which limit their legislative sessions to sixty days or so every two years—a member of a middlewestern legislature which cannot extend its sessions beyond sixty-one days reports that approximately one third of the time of the lower house is consumed by the rules which provide for roll calls.[13] Some revision has been undertaken of the rules, but for the most part little has been done in this direction, despite the burden which is imposed. How much can be done in bringing the rules up to date is questionable. A parliamentarian of the California Senate concludes: "There is little chance that any great improvement in legislative procedure can be made by the modification of parliamentary rules, as these rules have developed over a great length of time and have, in general, been adjusted to the needs of the various state legislatures by the adoption of legislative rules or by the decisions of the presiding officers of the various houses as questions have arisen." [14]

STEPS IN THE MAKING OF A LAW

Multitude of Proposals The quantity of bills and resolutions introduced in American state legislatures today is literally enormous. In a single year as many as fifty thousand proposals [15] may be made looking toward legislative action of one kind and another. The number is indeed so large that, despite the more than three thousand standing committees, the legislative councils, the

[12] See his *Up to Now*, The Viking Press, New York, 1929, p. 71. He refers to the New York Assembly and his own first term therein.

[13] William E. Treadway, "Problems Peculiar to the Short-Session Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 114, January, 1938.

[14] Paul Mason, "Methods of Improving Legislative Procedure," *ibid.*, p. 151.

[15] Between 1911 and 1916 the legislative reference bureau of the New York State Library computed a total of 213,482 bills introduced in the various state legislatures, an average of about 1360 per session. See Robert Luce, *Legislative Problems*, Houghton Mifflin Company, Boston, 1935, p. 647.

legislative reference bureaus, and other facilities, the legislatures often find themselves bogged down.

Character of Legislative Proposals There is the greatest diversity in the proposals that are brought to legislative bodies. Measures of far-reaching importance that affect millions of people, call for expenditures of vast sums of money, and relate to the vital policy of a state, may find themselves in the company of bills of the most minor character, providing for the correction of some technical error in a past enactment, the appropriation of a few hundred dollars, or the formal recognition of some obscure anniversary. Bills which have resulted from several years of careful study on the part of civic organizations, commissions, and ranking administrative agencies frequently are numbered just before or after crackpot schemes which provide some utterly impossible nonsense. Certain conclusions may be drawn from the welter of proposals. In the first place, the majority of the bills and resolutions (and it is not always easy to distinguish these from each other in practice) [16] have to do with finances or administrative technicalities and are actually not general "laws" at all. In the second place, one may be sure that there will be considerable duplication, that a half dozen or more proposals may relate to the same current issue.[17] In the third place, it should be noted that many of the proposals submitted to a general assembly do not look toward positive action, but rather aim at abolishing some agency already established or repealing some regulation currently in force. Finally, there are invariably a number of bills which embody the ill-conceived notions of certain individuals or organizations of the hare-brained type.

Source of Bills There are many individuals and groups anxious for the passage of legislation. Most of the pressure groups at times draft and sponsor legislation and many have elaborate programs which they push in virtually every legislative session. In this day and age it might seem that the desires of an individual would not receive much consideration—and this is ordinarily the case—but this does not deter fairly large numbers of persons from call-

[16] For a discussion of the general difference between a bill and various types of resolutions, see Chap. 19.

[17] Not only may several bills on the same subject be introduced, but it is not uncommon to have two or more of them passed in a single session, despite the fact that they contain conflicting provisions.

ing upon their legislators to assist in getting bills introduced. Many of the proposals made by individuals and organizations are devised for the selfish benefit of their authors; others are primarily aimed at repealing legislation already on the statute books; still others grow out of the hopes of civic-minded organizations for the improvement of government. There is hardly an agency of the state government that does not have its legislative program every time the general assembly meets. Modifications, often of purely routine character, are requested in existing statutes; enlarged authority may be sought; generous appropriations beyond the budgetary provisions may be asked. Local governments also have their pet projects, even in those states which do not permit special local legislation and seldom a session goes by without the amending of the classified charters of municipalities. The governor may take a positive stand in favor of legislation, even going so far as to send in bills which provide for what he has in mind. The political organization which is dominant may also have interests which call for legislation.

The Role of Legislators in Preparing Bills Finally, there are the legislators themselves who, if they have any experience in public affairs, are likely to develop a special concern in one or more phases of state government. To what extent individual members actually initiate legislation themselves may be difficult to ascertain. In many states a provision is made for noting that a bill has been introduced by "request"—one may be sure in such cases that the member had nothing to do with framing the proposal and probably does not even favor it. But even if a member does not use this device and gives evidence of having a deep personal interest, there is no certainty that he personally is the originator. In many cases influential constituents come to a legislator with the ideas but not the formal draft of a proposal. The member may consider it strategic to take upon himself the burden of drawing up the bill along the lines suggested by the constituent.

Method of Introduction After a bill has been prepared either by a private party or by the expert draftsmen employed by most of the states, it remains to a member of one of the houses to accomplish the actual introduction.[18] With the exception of reve-

[18] In Massachusetts an interesting device permits an ordinary citizen to get a bill before the General Court by "petition," but this is not used by most legislatures.

nue bills which somewhat less than half of the state constitutions specify shall start in the lower house, it is customary to permit a bill to be introduced in either house at the discretion of the parties concerned. There are two commonplace methods of getting a measure in the legislative hoppers: (1) the roll call which permits a member to arise when his name is called and present bills and (2) the less formal placing of a bill on the desk of the presiding officer.[19] In the first instance the bill is usually immediately given its first reading and referred to a standing committee, whereas under the latter the bill may be sent to the presiding officer's desk at any time but will not be read and referred to a committee until that officer finds a convenient time. The second method of introduction probably saves some time and in general is perhaps more advantageous than the roll call.[20] In many states there is a rule that all bills must be presented within a certain number of days of the beginning of a session, often before the session has passed its halfway mark, unless a two-thirds consent of the members is obtained.

Committee Reference The clerk of the house frequently decides which committee shall receive a bill, although the presiding officer has the final say. In many cases there is no question as to where a bill will go because its very nature labels it as belonging to a definite standing committee. However, some bills are of such a character that they could reasonably be sent to one of two or three committees and this permits some discretion on the part of the referring official. At times a presiding officer, particularly a speaker of the house, will arbitrarily assign a bill to a committee which he knows to hold a certain point of view, despite the fact that the contents of the bill may not warrant such reference.

Committee Consideration The committee stage in a state legislature is not unlike that which we have examined in Congress,[21] but it is important to keep a few differences in mind. In the first place, the mortality rate in state legislatures is distinctly smaller than in Congress. In at least nineteen states every bill must be reported out by legislative committees, irrespective of whether the

[19] A single legislative body usually uses only one of these methods.

[20] For an illuminating article on this general subject, see J. A. C. Grant, "The Introduction of Bills," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 116-122, January, 1938.

[21] See Chap. 19.

committee is favorably disposed or not.[22] Even in those states where there is no requirement of this kind it is customary to report out something like one half of all bills referred.[23] The constitutional rule requiring a report on every measure grew out of the experience of some states with irresponsible legislatures; bills widely regarded as highly desirable but opposed by a vested interest sometimes failed to come to a vote year after year because they were smothered in a committee. Apparently the committees have become sensitive as a result of the criticism aimed at them and consequently report out so many bills that the calendars become more than moderately congested. The fact that state legislators are nearer their constituents than members of the national Congress probably has something to do with this tendency, for it is not too easy to refuse to report a bill out of a committee when numerous personal visitations are made to members.

Public Hearings In giving attention to measures, standing committees may invite the public in to offer advice, but this is far less common than in the national legislature. At least thirteen states require certain public hearings, while twenty-three leave the matter to the discretion of the committees.[24] In light of the useful purpose served by public hearings in the national sphere it is to be regretted that the state legislatures do not make more use of this device.

Executive Hearings In practice the great majority of committee hearings are executive in character, though it should be noted that it is frequently the custom to invite in representatives of groups that are particularly concerned with the proposed legislation. The influence of some of these agents is very great, although in other

[22] Data on thirty-eight states are available in the current *Book of the States*. Exactly half of them require a report on all bills, but in Mississippi and perhaps other states the rule is not observed always.

[23] Professor L. M. Short reports some interesting material relating to one state in "The Legislative Process in Minnesota," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, pp. 126-127, January, 1938. In 1935 the lower house in Minnesota reported favorably on 32 per cent of the bills originating in that house and unfavorably on 20 per cent. The senate in the same year reported favorably on 28.1 per cent of the bills originating in that house and unfavorably on 13.3 per cent. The lower house reported favorably on 63.2 per cent of the senate bills and unfavorably on 5.3 per cent. The senate reported favorably on 60.8 per cent of the house bills and unfavorably on 1.5 per cent.

[24] For a tabulation, see the most recent *Book of the States*.

cases little or no attention may be paid to their points of view. It is sometimes argued that there is no need to hold public hearings when the groups especially interested are permitted to send in their representatives. The difficulty is that the committees that limit their contacts to agents of pressure groups may not hear the whole story for, despite the attempt of many of these agents to maintain a reasonable amount of objectiveness, they are hired to promote the interests of a certain group. The public interest in consequence may not be adequately brought to the attention of the committee.

Pressure Politics In a previous chapter some attention has been paid to the pressure groups.[25] There is no purpose in repeating the details as to types of groups and methods of procedure here, but it should be emphasized that no one can expect to understand the actual process of legislation in a state without taking pressure groups into account. They are constantly at work on the committees which consider bills, whether their representatives are invited to appear at hearings or not. Not satisfied with cultivating committees, they make contact with large numbers of other members of the general assembly, so that when a bill comes to the floor for debate and a vote they can count on favorable action.

Printing As soon as a bill is referred to a committee, it may be ordered printed so that the committee members will have ready access to copies. It is convenient for committee members to have printed copies of the referred bills at hand; yet the printing of all bills, irrespective of their character, is likely to be an expensive matter. In order to avoid the expense incident to printing the many bills introduced, some legislatures do not send a bill to the printer unless a committee regards it as sufficiently meritorious to deserve at least a qualified recommendation. This may work a hardship on a committee which is made up of a dozen or more members, especially if there is available only one or two copies of the typewritten text, but it does save a substantial amount of printing expenditure. After a bill has been ordered printed, state legislatures are often more careful than Congress and limit the copies to a comparatively small number.

Committee Report After a committee has completed its consideration of a bill and decided to recommend passage with or without changes, it prepares a report for submission to the house

[25] See Chap. 11.

to which it belongs, setting forth its recommendations. Important bills are very frequently accepted in principle by a committee but recommended for passage only after certain changes have been made in the text as originally proposed. If the committee is split, both a majority and a minority report may be drawn up. Having reached this stage, the committee notifies the appropriate clerk of its readiness to report and then must wait until the bill is called up for second reading. The congestion in some legislatures is so pronounced that there is not time to hear the reports of committees on many bills, even those of considerable importance.

Second Reading If the steering committee of the majority caucus or the presiding officer regards a bill as desirable, it is probable that time will be found to hear the report of the committee. After that has been made, it is usually provided by the rules that debate and amendments are in order. If the rules are not suspended and debate and amendments cut off—which is not an infrequent occurrence in some legislatures—spirited discussion may rage and numerous amendments may be offered. However, the debate in state legislatures is not reputed to be either brilliant or incisive in general, though at times almost any legislative body is likely to put on a good show. Of course, a great deal of time may be wasted in debate which is beside the point and the members may have their minds pretty well made up beforehand as to how they will vote, but, nevertheless, reasonable freedom of debate serves a useful purpose. It brings the bill into the limelight for one thing and permits the press to focus the attention of the public on what seems to be either a wise or an unwise action. Furthermore, debate and an opportunity to amend are fundamental in the democratic process. The full text of the bill may be read at this time, if it is read at all —in many cases it is not given a complete reading at any time despite the rules.[26]

Voting Every reading of a bill theoretically calls for a vote, but it is customary to take the favorable vote on the first reading for granted and to refer bills more or less automatically to standing committees. However, a vote is taken after second reading

[26] Several states, including California, Idaho, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oklahoma, and Tennessee, provide for full reading on third rather than second reading.

as to whether the bill will be permitted to pass to a third reading. If one fifth of the members demand a formal roll-call vote, it is often possible to have one, but it is more common to dispose of the second-reading vote by having the speaker put the question "All of those in favor, say aye; those opposed no." If the result of the *viva voce* vote, as this is called, is uncertain, a standing or hand vote may be called for or members may be asked to file between tellers for the purpose of being counted. The vote after third reading is, of course, the final one and it frequently is of the roll-call variety. There is doubtless much justification of the roll-call vote in the case of important bills which are about to be given a final vote, but the time consumed may be great. One member of a lower house reports that his house had 518 roll calls which consumed about 19 out of the 61 days permitted for a biennial session.[27] The New York lower house often complies nominally with the rule by having the clerk call only 4 names out of the 150. Several companies have developed electrical voting devices which cut the time required to a mere fraction of that necessitated by the traditional call by the clerk and in addition permit members to summon pages, indicate that they desire to be recognized, and so forth. However, despite the gadget-mindedness of the American people, only approximately one fourth of the states have installed these systems as yet.[28]

Third Reading After the bill has passed second reading, it goes back on the calendar to await a time when it can be given a third reading. Though the second reading offers greater hazards than the third, nevertheless many bills are not able to surmount the barriers imposed by this stage. Debate is ordinarily permitted at this reading and amendments are possible under certain conditions in some houses, but the third reading ordinarily sees less debate and distinctly fewer amendments than the second reading. If the bill passes, an engrossed, or specially prepared copy, is signed by the presiding officer and the bill is sent to the other house, where it goes through substantially the same process just described.

[27] William E. Treadway, "Problems Peculiar to the Short-Session Legislature," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 115, January, 1938.

[28] Several of the states, including Michigan and California, use electric voting machines only in their lower houses.

If the bill is passed in the same form by both houses, it still has to pass the gauntlet of the governor, which, as has been pointed out,[29] is a very difficult one in those instances where a fourth or more of the bills are vetoed.

Conference Committees Very few important bills pass both houses with every little detail unchanged and even a very slight change requires further action by the house in which the bill originated. If the modification is of a routine character, it is more than likely that the necessary approval will be forthcoming, but if extensive amendments have been added, there may be considerable question whether the house of origination will agree. In such cases it is the custom to appoint conference committees to seek an agreement. If the members of the conference committee cannot arrive at an understanding, they are finally discharged, but in most instances they find it possible to effect a compromise which they recommend to their houses. As a rule, the recommendations of conference committees are not subject to amendment and consequently must be accepted or rejected as a whole.

Passage over a Veto If the governor returns a bill to the house in which it started without his approval, the officers of that house announce this action to the members. An attempt may then be made to pass the bill over the veto of the governor. In those states which require a two-thirds vote for such action, it is not easy to achieve this end, particularly if the governor has any influence among the members. In the states which permit repassage by an ordinary majority vote, it is obviously less difficult to handle the situation, though even here the influence of the governor will frequently be such as to deter members from repeating their favorable votes. If both houses agree to ignore the governor and muster the required majority, the bill becomes law despite the veto.

Record of Bills Enacted into Law The legislative process is so complicated and long drawn out that one wonders how any considerable number of bills is finally enacted into law. The rules look more forbidding on paper than they actually are in operation and long practice has given the ordinary legislature a good deal of skill in getting along in spite of these encumbrances. A bill has about one chance out of four of getting over all of the obstacles, which, though perhaps not too favorable in principle, permits an

[29] See Chap. 30.

addition of more than ten thousand to the statute books in a single year.

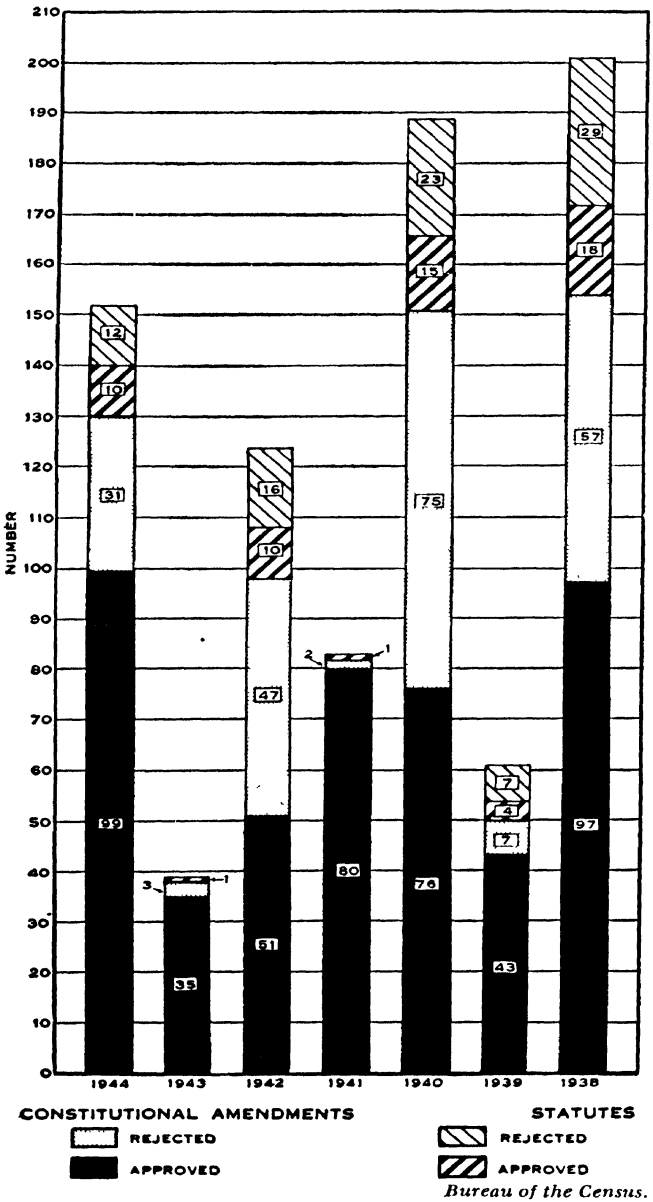
End of a Session As the constitutional limit becomes a matter of a few hours away in those states which do not leave the time of adjournment up to their legislatures, a most colorful spectacle greets the eyes of those who observe the general assembly in action. The budget which must be passed to keep the state departments in operation may still be awaiting action; bills that the governor has insisted be passed upon threat of a special session are still on the calendar; dozens of bills of first-rate and pressing importance remain to be considered. The agents of pressure groups are trying their best to make last-minute rescues of bills which are dear to the hearts of their clients, while the opponents of controversial legislation gird themselves for the final fight to prevent enactment. The rules are largely in suspension; the clerks and presiding officers have shouted themselves hoarse; few members can keep track of what is being done. The committee on rules brings in special orders of business designed to permit the passage of favored bills; the steering committee of the majority attempts to whip its members into final loyalty; individual members take the floor to seek unanimous consent so that a cherished bill can be rescued. As midnight approaches and the legal life of the general assembly is about to expire, there may still be business which simply has to be transacted and hence the clocks which tick away in the chambers are set back until the final gavel gives the signal for adjournment.

DIRECT LEGISLATION

The popular distrust of legislative bodies, the notorious control of the legislatures of certain states by powerful vested interests over a period of years, and the lack of attention which some general assemblies have displayed toward the desires of the people for certain types of legislation all contributed to the adoption of constitutional amendments providing for direct legislation by many of the states. By the end of World War I almost half of the states had made some provision for machinery which would permit the people to veto actions taken by irresponsible legislatures and to write upon the statute books laws which the general assemblies refused to pass. Since 1918 there has been comparatively little progress made.

NUMBER OF STATE PROPOSALS VOTED UPON

1944 AND SIX PRIOR YEARS



Bureau of the Census.

The advocates of direct legislation argued most persuasively for the initiative and referendum during the years following the pioneering of South Dakota in 1898, promising what amounted to political utopia to those states that would take appropriate action. Experience has hardly borne out the glowing claims made, but those states which have established such provisions have seldom abandoned them.

Constitutional Initiative Thirteen of the forty-eight states permit amendments to their state constitutions to be made by the initiative. After interested individuals and organizations have drafted amendments deemed desirable, they circulate petitions which must be signed by from 8 to 15 per cent of the voters, depending upon the state; five states specify that these signatures must be secured from various districts of the state.[30] After the requisite number of signatures has been obtained, the petitions are lodged with a specified state officer, often the secretary of state, and if enough of the signatures are bona fide the proposed amendment is submitted to the voters. The requirements in regard to ratification are usually the same as those prescribed when amendments are proposed by the legislature; in most states an ordinary majority of votes is sufficient.

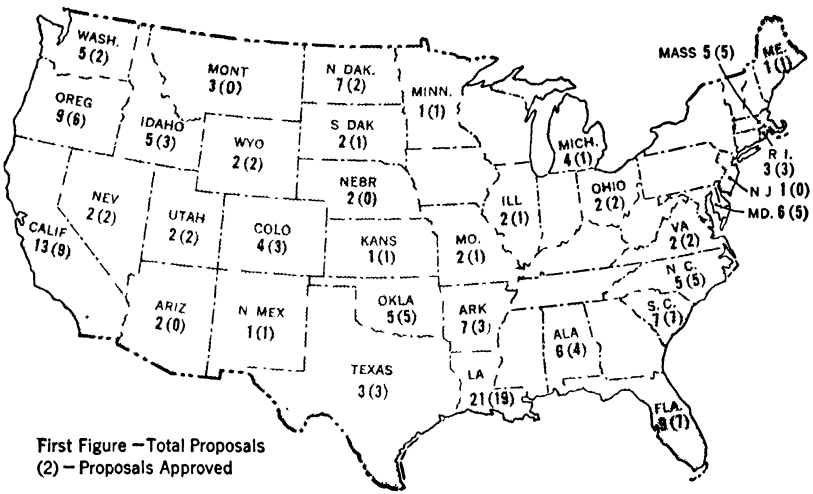
Statutory Initiative Nineteen of the states permit their voters to supplant the general assembly on occasion in enacting statutory legislation. Ordinarily bills are presented to the legislature first to see whether they will be enacted in the usual fashion, but if a general assembly persists in ignoring a bill which has wide popular support, resort is then taken to the initiative. Petitions which contain the text of the bill, or, if it is too lengthy, a summary of its principal provisions are circulated among interested voters for signature; from 3 to 10 per cent or from ten to fifty thousand of the qualified voters are required to sign before the next step can be taken. In certain states a small number of signatures will serve to bring the bill to the legislature and an additional number must then be secured to bring the measure to a vote if the legislature refuses to take action.[31] Some states stipulate that

[30] A convenient table listing the requirements in the various states will be found in James K. Pollock's "The Initiative and Referendum in Michigan," *Michigan Governmental Studies 6*, University of Michigan Press, Ann Arbor, 1940, pp. 87-90.

[31] Nine states have this indirect form of initiative.

signatures must not be confined to a single section of the state. If the proper number of signatures[32] is forthcoming, the petitions are sent to a designated state official for checking; then the measure is placed on the ballot if that official certifies that the requirements have been met.

Popular Referendum The most popular form of direct legislation is the referendum, which at present is in use in twenty-



Bureau of the Census.

DISTRIBUTION OF STATE PROPOSALS VOTED UPON: 1944

one of the states. Laws which the general assembly has enacted and the governor has permitted to become law may be highly objectionable to large numbers of citizens. The referendum permits the voters to have these measures submitted to a popular vote, if, and *this is of the greatest importance in practice*, they are not labeled as emergency laws. What happens in some states which have the referendum is that the legislature will brand virtually every statute of any general interest as belonging to the emergency category and that serves to prevent almost all laws from being brought under referendum action. From 5 to 10 per cent of the voters are re-

[32] Inasmuch as a good many signatures are invariably found invalid, a fairly wide margin over the minimum number required is necessary for successful action.

quired to sign referendum petitions in sixteen of the states, while four states stipulate a definite number varying from seven to fifteen thousand.[33] Six states regard it as essential that signatures be secured from various sections of the state. After the required signatures are in hand, the procedure is the same as for the initiative, except that in New Mexico 25 per cent of the voters, if they sign petitions, may get a law suspended pending a vote.

Use of Direct Legislation The information available regarding the use of the constitutional and statutory initiative and the referendum is not as conclusive as it might be. During a thirty-year period in Michigan twenty-three constitutional amendments were initiated by popular petition and only four statutes; but only four of the amendments and not a single one of the statutes were adopted by the voters.[34] California, on the other hand, has used the device much more frequently, for during a somewhat similar period 325 measures were submitted to the voters.[35] Oregon, too, has found it expedient to make distinctly more use of direct legislation, and during 30 years placed 214 proposals before the voters.[36] Colorado voted on 121 proposals during 1912-1938, with 43 submitted in 11 elections held from 1925 to 1939.[37] Perhaps it is fair to say that the most significant achievement of the initiative and the referendum has been negative rather than something to be indicated in positive figures; to what extent legislatures have been put on their good behavior because of such swords hanging over them cannot be absolutely demonstrated, but there is reason to believe that the influence has been fairly great.

Selected Bibliography

Bates, F. G., and O. P. Field, *State Government,* rev. ed., Harper & Brothers, New York, 1939, Chap. 8.

Book of the States, The, Council of State Governments and American Legislators' Association, Chicago, published biennially.

[33] See James K. Pollock, *op. cit.,* pp. 92-94, for the requirements of the various states.

[34] See *ibid.,* pp. 18-19.

[35] See V. O. Key and W. W. Crouch, *The Initiative and Referendum in California,* University of California Press, Berkeley, 1939, p. 527.

[36] See Waldo Schumacher, "Thirty Years of the People's Rule in Oregon," *Political Science Quarterly,* Vol. XL, p. 243, June, 1932.

[37] See State Legislative Office of Colorado, *The Initiative and Referendum in Colorado,* State Printer, Denver, 1939, p. 26.

Buck, A. E., *Modernizing Our State Legislatures,* American Academy of Political and Social Science, Philadelphia, 1936.

Chamberlain, J. P., *Legislative Processes; National and State,* D. Appleton-Century Company, New York, 1936, Chaps. 6, 8, 10-11, 14, 16.

Graves, W. Brooke, *American State Government,* rev. ed., D. C. Heath & Company, Boston, 1946, Chaps. 7-8.

—, ed., "Our State Legislators," *Annals of the American Academy of Political and Social Science,* Vol. CXCV, entire number, January, 1938.

Luce, Robert, *Legislative Procedure,* Houghton Mifflin Company, Boston, 1922, Chaps. 5-8, 9-10, 21-22, 25.

—, *Legislative Assemblies,* Houghton Mifflin Company, Boston, 1924, Chaps. 17-25.

New York State Joint Legislative Committee, *Final Report on Legislative Methods, Practices, Procedures, and Expenditures,* Williams Press, Inc., Albany, 1946.

Reed, T. H., ed., *Legislatures and Legislative Problems,* University of Chicago Press, Chicago, 1933.

State Government, Council of State Governments, Chicago, published monthly.

Walker, Harvey, *Lawmaking in the United States,* The Ronald Press Company, New York, 1934.

Winslow, C. I., *State Legislative Committees,* The Johns Hopkins Press, Baltimore, 1931.

33 · *State Courts*

With the exception of the federal judiciary the multitude of courts in the United States are legally included within the state judicial systems. It might be supposed from their names that municipal courts are an integral part of city government and that county courts belong to county government—and as a matter of fact these courts have a great deal to do with the efficient operation of cities and counties. However, they are according to the law parts of the state court system, deriving their authority from state constitutions and statutes and constituting the basic gradations in the state hierarchy of courts.

Contact with the People It should be borne in mind that it is the state courts that handle most of the litigation in the United States. Indeed well over 90 per cent of all the cases that arise, both civil and criminal, are begun, decided, and ended in one or more of the courts that belong to the state level. This, of course, means that the ordinary person has whatever contact he may have with the courts not with the Supreme Court of the United States or even a federal district court but with a justice of the peace court in Cross Roads, a municipal court in Megapolis, or a court of intermediate grade in Middle County. This very fact makes the state courts very significant, for their success or failure will in large measure determine the attitude of the American people toward the entire judicial system.

THE ORGANIZATION AND JURISDICTION OF STATE COURTS

Justice of the Peace Courts At one time justice of the peace courts were to be found in both rural and urban areas, but they are now more intimately associated with the administration of justice in the former, though it is not uncommon to find them existing alongside of municipal courts even in the large cities. The number of justice courts in rural districts is very large; there may be more

than a thousand in a single state. There has been a disposition to deprive them of some of their former authority because of their abuse of motorists,[1] but they remain as the foundation of the judicial structure in rural America, handling more cases than all the rest of the courts put together.

Justices of the Peace The justice courts are not only presided over but are largely identified with the justice of the peace. He is usually elected by the voters for a two- or a four-year term and often receives his position more or less by default because there is so little interest in the office. Unlike other judicial officers, the justice of the peace does not have to be trained in the law and, as a matter of fact, he seldom is. A study of 1,171 Pennsylvania justices of the peace a few years ago revealed that 189 were farmers, 152 realtors, 92 merchants, 62 clerks, 42 teachers, 27 miners, 25 accountants, 24 carpenters, 21 railroad workers, 21 salesmen, 14 painters, 10 barbers, 10 housekeepers, and so forth. Only 16 were attorneys and 181 were found to have no occupation at all other than their public position.[2] A judge without training in the law may seem paradoxical to many students. However, the cases disposed of by the justices are relatively simple and often depend more upon common sense and an understanding of human nature than upon an expert knowledge of the details of the law. Handbooks of basic rules of law are usually provided the justices for reference so that they can look up the law that applies in a given case.

Perquisites of Justices Only in rare instances is a fixed salary paid to a justice of the peace out of the public treasury;[3] instead he is expected to pay himself out of the fees which he collects from those who come before his court. Aggressive and unscrupulous justices have been known to make a considerable amount of money from their fees. This feature of the office is almost uniformly condemned by those who are expert in the field of the administration of

[1] However, a survey reported in 1941 by the national committee of judicial councils revealed that more than twelve thousand in forty-four states still exercise traffic jurisdiction. Incidentally, lack of common courtesy was encountered in one third of the courts examined. See the *New York Times*, July 20, 1941.

[2] See Bruce Smith, *Rural Crime Control*, Institute of Public Administration, New York, 1933, pp. 247-248. This study reports similar diversity among the justices in New Jersey and New York.

[3] In Pennsylvania only 5 of 1195 justices of the peace depended entirely upon salary; in Indiana only one justice derives his income from salary. See *ibid.*

justice—it violates a cardinal principle that the judge shall have no monetary interest in the case which he decides. As it is now, the justice of the peace is usually far from well to do and needs the income derived from his office; yet that income is dependent upon his finding persons charged with misdemeanors and criminal offenses guilty. In all of the cases involving litigation there is a striking tendency to hold those accused or proceeded against at fault. A study of 933 civil cases handled by 16 justices of the peace in Michigan revealed the startling fact that 926 cases had been decided in favor of plaintiffs and only 7 in favor of defendants.[4]

Jurisdiction of Justice Courts The justice of the peace courts have limited jurisdiction over both criminal and civil cases. In criminal cases they deal with petty theft, disturbing the peace, drunkenness, and offenses of that character; they may also hear charges of a more serious nature, binding the case over to await the attention of an intermediate court. In civil cases their jurisdiction varies from state to state, sometimes being limited to $50 or $75, again extending to $100 or more. Some of the justices concentrate their attention upon performing marriages.

Magistrate or Police Courts In sizable cities there are magistrate, police, mayoralty, or aldermanic courts to handle the tens of thousands of minor cases which arise out of human relationships. Although the officials who preside over these courts are more frequently trained in the law and receive stated salaries, the record of these tribunals is in general even worse than has been pointed out in the justice of the peace courts. Judges are not infrequently the creatures of political bosses and machines and if they are not personally venal they often find it expedient to decide cases on the basis of recommendations received from precinct committeemen rather than upon their merits.[5] The atmosphere in most of these courts is indescribably bad; noise, filth, confusion are frequently prevalent.[6] Their jurisdiction is often somewhat more extensive than

[4] See Edson R. Sunderland, "The Efficiency of Justices' Courts in Michigan," appendix D of *Report on Organization and Cost of County and Township Government*, Michigan Commission of Inquiry, 1933.

[5] Denis Tilden Lynch, *Criminals and Politicians*, The Macmillan Company, New York, 1932.

[6] For comments, see Raymond Moley, *Tribunes of the People: The Past and Future of the New York Magistrates' Courts*, Yale University Press, New Haven, 1932.

that permitted a justice of the peace court. The report of the Pennsylvania Crime Commission of 1929 showed that 74 per cent of all cases of major crime did not get beyond these courts.[7]

Municipal Courts The unsatisfactory state of affairs in the police courts has led to the establishment of municipal courts in some of the larger cities, which may or may not entirely supplant the magistrate courts. Chicago, New York, Detroit, Philadelphia, Cleveland, Cincinnati, Baltimore, Boston, and Indianapolis are among the cities that now have unified municipal court systems. The jurisdiction of these courts is usually greater than that given magistrate courts, though it may not be equivalent to that of intermediate courts.[8] Political influences have undoubtedly been less controlling than in the police courts, but it would not be fair to say that such considerations are unimportant.[9] Judges are more adequately trained and superior in general character to the justices of the peace; more attention is usually given to the atmosphere of the courtroom.

Intermediate Courts Standing immediately above the justice and magistrate courts in the judicial hierarchy are the district, county, superior, general sessions, oyer and terminer, and circuit courts, as the intermediate courts are designated in the several states. These courts are organized on a geographical basis, which frequently makes the county the unit, although at times two or more counties may be joined together if the amount of judicial business is comparatively small. In the more populous counties the burden of cases is so great that a single court cannot possibly handle everything and several divisions or sections of the court may be created. Intermediate courts are presided over by single judges[10] who are required to be members of the bar and receive fixed salaries. They have clerks and reporters attached to them for the keeping of records and the making of transcripts; bailiffs or deputy sheriffs maintain order and carry out the orders of the court; the prosecut-

[7] Quoted from W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, p. 515.

[8] In Philadelphia civil cases may involve up to $2,500 and criminal offenses with the exception of felonies, perjury, forgery, and so forth, are triable at the option of the district attorney.

[9] For a discriminating discussion of the achievements of the Chicago municipal court, see Albert Lepawsky, *Judical System of Metropolitan Chicago*, University of Chicago Press, Chicago, 1932, especially Chaps. 6 and 7.

[10] Of course, where there is more than a single court there will be more than one judge, but only one judge sits in each case.

ing attorney is present or represented by deputies when criminal cases as well as certain civil cases are being heard.[11] These are the courts which make use of both grand juries and trial juries, as far as these instrumentalities of justice are in use. Intermediate courts have both original and appellate jurisdiction, hearing cases appealed from the justice and magistrate courts and giving attention to more important cases that are brought to them to begin with. They have both criminal and civil jurisdiction and hear cases in equity, but some states provide separate tribunals of intermediate grade to handle these different kinds of cases. In a single state there may be different arrangements for rural areas and metropolitan counties—the same court may try both criminal and civil cases in the former but there may be superior courts for civil cases and criminal courts for criminal proceedings in the latter. As far as the scope of jurisdiction is concerned, these courts are ordinarily unlimited either in the amount of money involved or the seriousness of the offense which is charged.

Appellate Courts Above the intermediate courts there may be a single appellate court, usually known as the "supreme court," or it may be necessary to provide a more elaborate system for disposing of those cases which must receive further consideration. A state with a fairly small population, such as New Mexico, finds it reasonable to expect the highest court of the state to receive appeals directly from the intermediate courts. On the other hand, it would be an utter impossibility for New York to authorize all appeals from the intermediate courts to go at once to the court of appeals; consequently that state has what is known as a "supreme court" which is organized into trial and appellate divisions. The states with fairly large populations and reasonably complicated industrialization face still another problem; they do not need the New York facilities but they would swamp their highest courts if all appeals from intermediate courts were concentrated in a single

[11] The prosecuting attorney, sometimes called the "state's attorney" or "district attorney," represents the state in handling cases of criminal character against accused persons. He and his deputies prepare the case for the state, muster the evidence together, call witnesses to support their charges, and cross-examine the witnesses called by the defense. In civil cases the state is ordinarily not one of the main parties, but the prosecutor may watch proceedings to protect the public interest where domestic relations and certain other types of civil cases are being tried.

tribunal. These states frequently create a court, often known as an "appellate court," which relieves the supreme court of much of its burden and is given final jurisdiction in certain types of cases which do not involve the validity of laws.

Supreme Courts The highest court of a state, customarily designated the supreme court, is always made up of a bench of judges, varying in number from three to fifteen. These courts have final jurisdiction in all cases which do not involve a federal law, treaty, or constitutional provision. They ordinarily have no original jurisdiction, but may be given the authority to make rules for lower courts. In general, they give their attention to points of law rather than to facts which are left to the lower courts, but some states permit the highest court to review both the law and the facts in a case. The prestige attached to service on such a court is usually great, despite the fact that salaries may be less than the returns from private practice.

Special Courts The courts which have been discussed here constitute the regular judicial system of the states. In addition there are special courts. Juvenile courts have been created in the more progressive states, either on a state-wide scale or at least in urban areas, for the handling of cases which involve children. Land courts have been set up by a few states to settle disputes in regard to land titles; domestic relations courts sometimes are provided to handle family cases with or without juvenile jurisdiction; courts of claims receive cases in which individuals or corporations maintain that they are entitled to monetary damages from the state. Finally, there are certain administrative agencies which act in a quasi-judicial capacity. The workmen's compensation commissions which determine the awards to those injured in connection with industrial employment and the public-service commissions which fix rates and determine standards of service of public utilities are perhaps the best known.

Judicial Councils Although state courts are organized in such a fashion that jurisdiction flows from one to another along well-recognized channels, there has ordinarily been a considerable amount of autonomy. An independent judiciary is frequently spoken of as an integral part of democratic institutions and this can hardly be denied in so far as independence of political dictation is concerned. On the other hand, unless the various courts of a state

are working in harmony and following established principles, there is likely to be delay, confusion, and other weaknesses which are not incident to an efficient administration of justice. During the last two decades a considerable movement has developed looking toward a co-ordination of the efforts of all the courts throughout a single state through the establishment of judicial councils.[12] Approximately two thirds of all the states have now set up these councils,[13] which are charged with three types of function in those jurisdictions where authority is at all adequate: (1) general supervision over the routine work of courts of every grade, (2) the making of rules, and (3) the gathering of data and the conduct of investigations pertaining to the administration of justice.

THE JUDGES

Given honest, intelligent, open-minded, well-trained, industrious, and interested judges, almost any court will give a good account of itself, despite the litigious citizens, the members of the bar who may be of the shyster variety, and the pressure of work. Of course, a docket may be so overloaded that even a superman is bogged down and rules may be so outworn that they constitute a heavy burden. Nevertheless, making every allowance for the importance of rules, the character of the judges remains uppermost.

Methods of Selection There are two general methods of selecting judges: (1) election by the voters, and (2) appointment, usually by the governor. The earlier judges were appointed and the judges of some of the eastern states and California continue to receive their positions at the hands of the governor, perhaps with the consent of a council or senate. However, the great majority of state judges are chosen by popular election.

Appointment versus Election There has been a great deal of discussion of the relative merits of appointment by a governor

[12] Many articles have been written on this subject. Among others, see: Roscoe Pound, "The Crisis in American Law," *Harpers Magazine*, Vol. CLII, pp. 152-158, January, 1926; J. A. C. Grant, "The Judicial Council Movement," *American Political Science Review*, Vol. XXII, pp. 936-946, November, 1928; and "Judicial Councils and Their Trends," *Journal of the American Judicature Society*, Vol. XVIII, pp. 150-152, February, 1935.

[13] One state provides for such a council in its constitution; twenty states have passed statutes; three have councils as a result of supreme court action. See the current volume of *Book of the States*, Council of State Governments and American Legislators' Association, Chicago, for additional information.

and election by the voters and a wide difference of opinion prevails at present as to which method is superior. The proponents of popular election maintain that the judges should be responsible to the people, that appointment makes for judicial tyranny, bureaucracy, arrogance, and other undesirable attitudes. Advocates of appointment point out the mediocre caliber of many judges chosen by popular election, claim that the courts should be above partisan politics that characterize many elections at which judges are picked, and are of the opinion that the mad scramble for judicial positions in some states brings the courts into bad repute.

No Single System Desirable So much depends upon the local situation that it is impossible to lay down conclusions that are valid everywhere. Poor judges have been placed in office by governors and equally inferior ones have received this position at the hands of the voters; excellent choices can be cited under both systems. Governors may be dominated by political bosses, while elections may also be controlled by political bosses. If there is a tradition pointing in the direction of able and courageous governors in a state, the appointment of judges has much in its favor. If the electorate is alert and responsible, reasonably good choices may be expected under a plan of popular election.

The California Plan California adopted a constitutional amendment in 1934 which authorizes the governor to appoint appellate and supreme court judges, subject to approval by a commission consisting of the chief justice of the state, the presiding justice of the appellate court of the district involved, and the attorney general. At the expiration of a term a judge may have his name put on the ballot and if approved by the voters he continues in office.[14]

Tenure In contrast to the federal practice, states ordinarily give their judges limited tenure. For a time there was a widespread feeling among the voters that two years were enough for judges, but this has given way to an admission that six or more years are not too many for a judge to become familiar with the duties attached to his office. Terms of eight, ten, twelve, and even twenty-one years, especially for the appellate judges, are now provided by

[14] For a good article on the California system, see Charles Aikin, "A New Method of Selecting Judges in California," *American Political Science Review*, Vol. XXIX, pp. 472-474, June, 1935.

some states;[15] Massachusetts, New Hampshire, and Rhode Island give appointments for indefinite terms pending good behavior. More than that, re-election is commonplace in many places, so that even in those states where the principles of Jacksonian democracy are still very strong individual judges sometimes hold office for fifteen or twenty years.

Compensation There is a great range of salaries paid to judges; even within a single state the variation is striking from one type of court to another. Supreme court judges, of course, fare best and are paid from some $5,000 per year to more than $20,000.[16] Salaries of from $5,000 to $10,000 are customary—twenty-two states allow more than $10,000. At the other end of the scale are the justices of the peace who receive no fixed salary as a rule and who average only a few hundred dollars per year in fees. Intermediate judges range from $1,200 or thereabouts to $10,000 or more;[17] even in a single state there may be a spread of from $4,000 to $10,000 for these judges, depending upon the population of the district in which their court is located. In comparison with the salaries paid by the states to other officials, judges are quite well off, though they may find themselves with distinctly smaller incomes than attorneys in private practice.

Removal It is never satisfactory to continue in public office a person who has demonstrated his lack of fitness for that office either by malfeasance or general incompetence; in the case of a judge it is especially distasteful. Various methods of taking care of such cases are provided by the several states. Impeachment is everywhere available, but it is so cumbersome that it is rarely used. Seven of the states permit judges to be recalled, though this is less common in the case of judges than other public officers. State supreme courts occasionally have the authority to remove judges of lower courts from office, while another group of states makes provision for removal by legislative or executive action.[18] All in

[15] Vermont still has two-year terms; Pennsylvania gives some judges twenty-one year terms. For a table showing tenure in all of the states, see the current volume of the *Book of the States.*

[16] For a table showing salaries paid by all states, see the *Book of the States.*

[17] Rhode Island pays as little as $1,200 and Massachusetts a minimum of $1,500; New York pays up to $28,000.

[18] In twelve states a judge may be removed by legislative resolution; in nine others by the governor at the request of the legislature.

all, the removal of judges is not made easy, even in those instances where it is probably desirable.

LAW APPLIED BY STATE COURTS

State courts are bound by the constitutions of the United States and of their respective states. They must take into account the laws passed by Congress, inasmuch as a federal statute takes precedence over a state enactment. They should be aware of treaties which the United States may have entered into with foreign countries, for a state law is ordinarily not permitted to infringe upon a treaty.[19] International and admiralty law may have some bearing on a few cases, although these ordinarily come within the province of federal courts. Most of the cases which a state court has to decide involve the statutory law of that state, common law, or equity. Occasionally executive orders issued by the governor may apply and it is conceivable that the provisions of an interstate compact might come up for application in a certain case.

Statutory Law As we have already noted in discussing the legislative branch of state government,[20] there is seldom any reluctance on the part of general assemblies to place upon the statute books large numbers of enacted laws. Even though most of these are related to administrative details or financial items rather than of the general law variety, the accretion year after year or biennium after biennium is substantial. The situation is further complicated by the fact that many laws which appear on the statute books and have never been formally repealed are in fact dead letters because they have been ignored by the public officials since their enactment or because they have been rendered obsolete by changed conditions. Several of the states, including California, Louisiana, and the two Dakotas, have attempted to codify their law, thus withdrawing from the common-law field and supposedly placing all of their law in the statutory category. A number of states have sought to codify their criminal law, their criminal procedure, their civil procedure, their law relating to liens, and their real-property law, thus furnishing the courts a statutory guide and making it largely unnecessary for

[19] It has been alleged that the laws excluding Orientals from holding land in certain western states and otherwise engaging on an equal basis with citizens conflict with this general rule.

[20] See Chap. 32.

them to pore over court decisions not only of their own state but from other states for the purpose of discovering the weight of precedent as to the common law.

Common Law and Equity The development of common law and equity in England and their transplantation to the United States has been discussed at an earlier point [21] in connection with federal courts and does not require repetition here. Both common law and equity are of great importance on the state level and indeed have a more intimate relationship to the states than to the national government. Every state with the exception of Louisiana has through the years built up by court decision and usage a body of common law which, though following certain broad outlines, nevertheless has been adapted to meet local conditions. In those few states which have attempted to codify every inch of their legal domain, the role of common law is at present supposed to be unimportant, though in actuality some attention has to be given to it because the code invariably omits certain items. However, in most of the states common law occupies an important field.

Whether law be derived from statute or the precedents laid down in court decisions and usage, it may be divided into two general categories: criminal and civil.

Criminal Law Criminal law is intended to protect the state or community against wrongful acts of persons or groups; these are of two types: misdemeanors and felonies. Misdemeanors are often regarded as acts which, though branded illegal, are nevertheless not very serious and indeed may not involve criminal character on the part of an offender. Some of them, for example exceeding the arbitrary speed limit on a well-paved highway which has few hazards and not much traffic, actually are of this variety, but some states label bribery, the receiving of stolen goods knowingly, and assault and battery as misdemeanors. Certainly these offenses cannot fairly be considered as minor or innocent. The more serious offenses are supposedly classed as felonies. Here are found such crimes as murder, which is the intentional killing of a human being; manslaughter, which involves unintentional killing; burglary, which consists of breaking into private premises with the intent to commit a felony; robbery, which is sometimes confused with burglary but involves the taking of property from a person or in the presence

[21] See Chap. 20.

of its owner; larceny, which is the theft of property belonging to another person; and arson, which is the willful burning of buildings. Forgery, kidnapping, bigamy, and perjury are usually considered felonies, though not always.

Civil Law Civil law is intended to protect private rights and property and emphasizes the individual rather than the people as a whole, although some civil cases, for example those involving domestic relations, may have significant social implications. While there are numerous civil laws that seek to guarantee personal security and personal liberty of the individual, the greatest number relate to the safeguarding of private property. The law having to do with real property alone is extensive and complicated, regulating such matters as titles, conveyances, and use. In the case of personal property there are the many laws relating to such things as stocks, bonds, notes, leases, tangibles, trade-marks, and copyrights. Another important type of civil law has to do with torts, which is the term used to designate violations of private rights. Here are the laws applying to trespass, negligence, nuisance, false arrest, alienation of affections of a husband or wife, libel, and slander. Then there are civil laws of various sorts which regulate the making, carrying out, and abrogation of contracts. Another important category has to do with marriage, property rights of husbands and wives, divorce, inheritance, and the disposition of estates left without directions from the deceased. The laws providing for the chartering of corporations, the regulating of their actions thereafter, their dissolution, and liability are very important in this day when so much of the business is carried on by corporations rather than individuals.[22]

COURT PROCEDURE

A casual visitor to the courts of various grades in a single state, to say nothing of all of the forty-eight states, would take away a bewildering series of impressions. In the justice of the peace courts procedure is ordinarily most informal, depending very largely upon the whim of the particular justice. A police court usually rates a room in some public building, but it is often not well suited for holding court, being dark, poorly ventilated, grimy with smoke and

[22] A more extended but reasonably simple discussion of this topic will be found in E. M. Morgan, *Introduction to the Study of Law*, Callaghan & Co., Chicago, 1926.

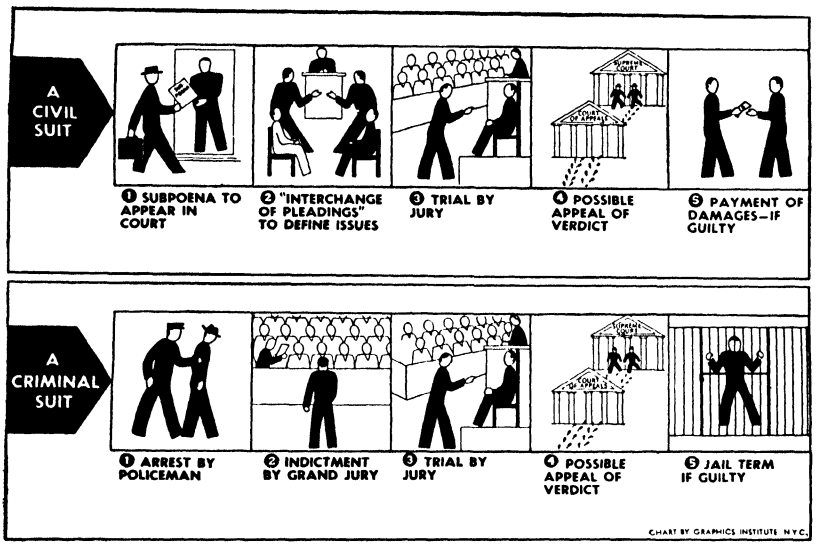
dirt, and inadequately furnished. There are supposed to be definite rules regulating the procedure in such courts; however, the weeping of relatives, the chattering of youngsters, the shouting of the court attendants, and the general bustling around are such that it is difficult to recall anything save the noise, the confusion, and the haste—a single case may be disposed of in two or three minutes and is not likely to receive more than ten or fifteen minutes at most. In an intermediate court there is almost always a semblance of order; indeed the proceedings may literally drone away in dullness. Here there is ordinarily a definite procedure, but a casual visitor may not get much of a notion of what is going on because of the length of time required to dispose of a single case and the emphasis upon technicalities. Finally, the appellate courts almost invariably convey a sense of decorum, even to ponderousness. The black gowns of the justices and the orderly routine minimize the personal element until it may be difficult to realize that a case being heard involves the life of a man, the right of children to inherit, or any one of a dozen other situations which are vibrant with human hopes, fears, hates, and weaknesses. But despite the conflicting customs, the vagueness of focus, and the respect paid to forms and verbiage of generations long dead there are certain essential elements of judicial procedure which a student of American government may find it worth while to remember. In the succeeding paragraphs an attempt will be made to summarize the conventional steps in criminal and civil procedure.

CRIMINAL PROCEDURE

Preliminary Steps After an offense has been committed, the accused person is arrested by the police either with or without a warrant. If the police have witnessed the act or are reasonably certain what occurred a warrant is not necessary, but if there is a question as to guilt a warrant is sworn out by a private person or a police officer before a judge. The accused is released on promise to appear when required or taken to jail to await preliminary examination by a justice of the peace, police magistrate, municipal judge, or intermediate court judge, though in certain instances he may be taken at once before an appropriate judicial officer. If there is undue delay and the accused has been incarcerated, he may have his attorney sue out a writ of habeas corpus,[23] which will have the effect

[23] For an explanation of habeas corpus, see Chap. 7.

of bringing him before a judge to hear the charges against himself. Where he is jailed, he may frequently secure bail,[24] and hence gain his freedom pending subsequent action. If the preliminary examination reveals evidence pointing to the guilt of the accused and the charge is a serious one, the case is then either transferred to a grand jury or handled by the prosecuting attorney under a process of information.



THE COURSE OF JUSTICE IN MAJOR LAW CASES

Grand Jury Indictment or Information Grand juries, consisting of from six to twenty-three citizens plus a foreman, depending upon the state, hear the evidence laid before them by the prosecuting attorney but do not question the accused. Indeed he cannot be compelled legally to testify against himself at any stage unless he desires, though third-degree methods not uncommonly violate this constitutional immunity. If the grand jury is of the opinion [25]

[24] Bail consists of putting up a bond secured by money or property or the guarantee of propertied friends that the accused will appear in court when called. With some nine exceptions the states have constitutional provisions relating to bail; the others handle the matter by statute. In some particularly atrocious crimes bail is not permitted.

[25] Grand juries do not have to vote unanimously to indict.

that there are reasonable grounds for trial, the accused is indicted and bound over to await the attention of a trial court. Twenty-five American states have adopted an arrangement which substitutes action by the prosecuting attorney for an indictment; the prosecutor goes before the judge with his evidence and asks to have the accused held for trial.

The Trial Jury Many courts are so far behind with their work that it requires months to get around to a trial in a given case. When the case is finally called, the charge against the accused is read and he is ordered by the judge to state whether he pleads "guilty" or "not guilty." If he is willing to admit his guilt, the judge can impose sentence and the case is disposed of in short order; however, if the accused denies guilt, a formal trial must be scheduled. The accused decides whether he wants to be tried by a jury or to waive this right[26] and have the judge act as a jury. If a jury is elected, the first step is to select its members and this sometimes requires several weeks in a hotly contested case where the accused is able to employ a battery of able lawyers.

The Trial With a jury in the box, the prosecutor takes the stand and presents the case against the accused, delivering an opening speech and calling witnesses to prove his contentions. The questions that may be asked witnesses are limited by the court rules and if the opposing counsel raises an objection to a given question the presiding judge must decide whether it is proper. Then the attorneys for the defense present the case of the accused in a similar fashion. It may be added that both sides are permitted to cross-examine the witnesses of the other so as to challenge testimony, suggest error, and otherwise get at the facts, but the judge has supervision of this and may not allow certain questions. The accused may or may not take the stand at his own discretion; if he takes the stand he must submit to cross-examination by the prosecutor, though he ordinarily cannot be asked direct questions as to whether he is guilty. After this stage has been completed, both sides make speeches summing up their arguments and the testimony of their witnesses; the judge instructs the jury as to the law in the case, if there is a jury; and the case rests with the judge or jury.[27]

[26] This right is not always accorded. For example, in cases involving capital punishment a jury trial is ordinarily required.

[27] For additional discussion of juries, see Chap. 7.

Verdict and Sentence If a jury is used, it retires to a room set aside for its deliberations and proceeds to discuss the case and to ballot. Under the common law a trial jury must be unanimous and that is still frequently required, although some states have modified this in cases that do not involve the death penalty. As soon as the jury reaches a decision or verdict, it informs the judge or if it cannot agree it asks to be discharged. If the judge serves as judge of both facts and law, he usually takes a certain amount of time after the case has been presented to reach a decision. When the verdict of the jury or the decision of the judge is ready, the court again convenes and the results are announced. If the accused is acquitted, he is released; if found guilty he is given an opportunity to say a last word in his behalf and sentenced either at once or after a short delay.

Appeals, Changes of Venue, and Punishment If the accused is not satisfied that he has had a fair trial or maintains that the judge has erred in permitting certain questions to be put to the witnesses or has misinterpreted the law, an appeal can be taken within a specified period, which may or may not be granted. If the accused is of the opinion that he cannot receive his desserts in a local court, he may request a change of venue which will transfer his case to a court in a nearby county. Punishment varies from a small fine and/or prison sentence to death in the electric chair or life imprisonment. In the case of a prison sentence there is a growing tendency to give an indeterminate sentence which may be finally determined by the conduct of the guilty person in prison.[28]

CIVIL PROCEDURE

Preliminary Steps Some of the procedure in civil cases is like that in criminal cases, but there are important differences. To begin with, a civil case is begun by a plaintiff, who is ordinarily a private party, rather than by the public prosecutor or the police. The plaintiff has his lawyer prepare a complaint or declaration which sets forth the reasons why he brings the case against another

[28] Much additional information in regard to criminal procedure is available in such books as E. H. Sutherland, *Criminology*, rev. ed., J. B. Lippincott Company, Philadelphia, 1940; Raymond Moley, *Our Criminal Courts*, Minton, Balch & Company, New York, 1930, and *Politics and Criminal Prosecution*, Minton, Balch & Company, New York, 1929.

party, who is the defendant. This is presented to the proper court which has its officers serve a copy on the defendant, together with a summons to answer within a specified time. The defendant may admit the facts but deny that they constitute grounds for legal action, in which instance he files a demurrer; or he may deny the facts as set forth. If the judge upholds the demurrer, the case is dismissed; otherwise it is ordinarily scheduled for trial either by a jury or by the judge alone if the parties decide that they do not want a jury—and this is quite commonplace. The selection of a jury proceeds along lines similar to those described in criminal cases, except that it is usually not so difficult to satisfy the attorneys for both sides; indeed it is often customary to accept a jury which has already been selected and used for other cases.

The Trial The trial itself follows rather closely the pattern of criminal procedure. However, there is no prosecutor, less emotion is displayed as a rule, and rebuttals are used by both sides to close the presentation of the case. But there are the same opening statements from attorneys setting forth what they expect to prove, the same questioning and cross-examination of witnesses, and the general supervision given by the judge to the questions put in both direct and cross-examination. After the attorneys for both sides have rested, the jury retires or the judge takes a recess to consider the evidence, and when a verdict or decision is ready, the court is called to hear it.

Judgments and Their Execution Instead of imposing a fine or prison sentence, civil courts render judgments which, except in equity proceedings, usually involve monetary damages—thus the defendant is ordered to pay a certain sum if the case is decided in favor of the plaintiff. However, there is no very adequate penalty attached to refusal to satisfy a judgment, though at times in the past those who could not comply were lodged in prison. If the plaintiff can locate property belonging to the defendant, he can have the sheriff levy an execution on that property to the extent necessary to satisfy the judgment, even to selling the property for that purpose. But in thousands of cases defendants make no attempt to pay; plaintiffs are not able to find property upon which to levy; and the judgments remain unsatisfied.

Equity Decrees In equity cases the decree of the court usually orders some action to be performed or forbids a certain

action; a contract may be ordered carried out, for example, or a tenant may be restrained from cutting a door through a partition. If these decrees are ignored, prison for contempt of court follows.

The Problem of Appeals Appeals are permitted in both civil and criminal cases under certain circumstances. With the court dockets so heavily loaded and many courts several years behind with their work, it might be supposed that there would be a very strict attitude in the matter of allowing appeals and there is some evidence which points in this direction. Nevertheless, in general, American courts are very liberal—far more so than those in other countries—in permitting appeals both in criminal and civil cases. Attorneys resent any attempt to circumscribe the right to appeal cases to the highest state court and even to the Supreme Court of the United States itself. Moreover, there is a feeling in many quarters that the right to appeal is an integral part of the democratic traditions of the United States. Finally, the complicated character of modern business leads to litigation so intricate that consideration by appellate courts is almost a necessity.

CURRENT PROBLEMS RELATING TO THE COURTS

Court Costs The costs of bringing cases to states courts are, of course, distinctly smaller than in connection with the Supreme Court of the United States. But even so they are high enough to make it difficult, if not impossible, for large numbers of people to avail themselves of judicial assistance in settling their troubles. The establishment of municipal courts has done something to bring costs down; in New York and Cincinnati minimum costs are $2. In contrast the minimum in Philadelphia has been $11. Since there are vast numbers of disputes which involve only $5, $10, or $20, it must be evident that where the minimum court costs amount to $5 or more and lawyers must be retained at additional expense, it is scarcely feasible to resort to the courts.[29] In the intermediate courts costs are, of course, usually higher than in the justice and municipal courts and the fees asked by lawyers often run to a large sum. Appellate courts, with their requirements of voluminous records and generous expenditure of time by attorneys, may be so expensive in

[29] See R. H. Smith, *Justice and the Poor*, 3rd ed., Charles Scribner's Sons, New York, 1924.

an ordinary case that a person of moderate means would face bankruptcy were he to indulge in so costly a luxury.

Small-claims Courts Inasmuch as large numbers of civil cases involve less than $50 and ordinary court costs and attorneys' fees go far toward eating such small amounts up, attention has been focused upon reforms in this category. Small-claims courts have been set up in Detroit and a number of other urban centers and these maintain drastically lower scales of costs besides making it unnecessary to employ lawyers. Persons who have been cheated out of their small savings, denied wages of a few dollars, or despoiled of property representing a small amount, may carry their troubles to one of these courts at a cost which may run as low as 35 cents and will seldom exceed $1.50. Instead of retaining an attorney an injured party goes directly to court, fills out forms indicating the facts in his case, and is informally confronted by his opponent in the presence of the judge who asks questions of both parties intended to get at the truth.[30]

Legal Aid In order to get at the other aspect of the problem having to do with attorneys' fees, something has been done in the way or setting up legal aid bureaus. Those unable to afford legal counsel may apply to these agencies, either on their own initiative or upon reference by social service organizations. Law students sometimes volunteer for work of this kind, while more mature attorneys may either give of their time without charge or be employed by these bureaus. A small fee of 50 cents may be charged as a sort of registration fee, but beyond that legal advice is furnished without cost to the poor. Most of the legal aid bureaus are privately supported and have such limited resources that they cannot meet the demands made upon them, particularly when assistance in fighting cases through the courts is needed. A few states, recognizing the importance of the problem, have provided public defenders paid out of the public funds.

Delay A survey made in New York City a few years ago revealed that most of the courts in that center of business required

[30] An illuminating study has been made of the small-claim litigant in one city by Gustav Schramm. See his *Piedpoudre Courts; A Study of the Small Claim Litigant in the Pittsburgh District*, Legal Aid Society, Pittsburgh, 1928.

from two to four years to dispose of cases after they were filed. Individual cases may be cited which have been before the courts of a single state for seven years or longer. Not all of the delay is necessary, for lawyers may speed their cases up in many instances if they desire and the waiving of a jury trial may cut the time drastically. Unified court systems may also help reduce the delay by sending in temporary judges, improving procedure, and putting pressure on dilatory judges. However, when all of these steps have been taken, the dockets of many courts are still congested and delay is more or less inevitable. Additional judges have been provided in some instances, but the increase in litigation has more than kept pace with additions to personnel.

Declaratory Judgments It has been suggested that one way to cut down on the delay is to furnish declaratory judgments which clarify the law involved in controversies. There are a good many reasonably minded persons who would be capable of working out disagreements with associates if they could find out exactly what the law on the subject was. The facts are mutually agreed upon by the parties, but attorneys report that the law is not clear on the subject and that the case will have to be submitted to the courts before any settlement is possible. Approximately three fourths of the states have now made some provision for declaratory judgments,[31] with the result that numerous cases are kept out of the courts.

Arbitration and Conciliation Another attack has been made on the problem of congested dockets by the authorization of courts of arbitration and conciliation which are organized by business associations, served by private citizens, but whose decisions are legally binding where parties have agreed beforehand to submit disputes to them. Almost all of the states now have statutes dealing with arbitration, though arbitration clauses concerning future disputes are enforceable in only about one fourth of the states. It is maintained that these private agencies not only relieve the ordinary courts, but that they reduce the costs of settling disputes and at least at times are able to achieve agreements which are more sensible than the regular courts.

Technical Emphasis There are few if any other countries

[31] Twenty-five states have adopted the uniform act and eleven others have their own declaratory judgment acts.

in the world where technicalities receive as much emphasis in connection with judicial procedure as in the United States. Considering the pride which we take in our business techniques, our dislike of red tape and general impatience, and our ability to forge ahead into unknown fields in the realms of science, it is paradoxical that this should be the case, for one might logically expect the most efficient and speedy handling of court business. Perhaps the fact that courts are largely controlled by lawyers whose minds are steeped in the traditions of the law may explain in large part the meticulous attention paid to every jot and tittle. There has been encouraging progress in some of the states toward reducing the more or less meaningless incidentals in connection with the administration of justice. Revised rules of procedure have made their appearance; pretrial negotiations make it possible to settle large numbers of civil cases out of court.

Selected Bibliography

Aumann, F. R., *The Changing American Legal System,* Ohio State University Press, Columbus, 1940.

Baldwin, S. E., *The American Judiciary,* D. Appleton-Century Company, New York, 1905, Chaps. 8-25.

Borchard, E. M., *Declaratory Judgments,* Banks-Baldwin Law Publishing Company, Cleveland, 1934.

Bruce, A. A., *The American Judge,* The Macmillan Company, New York, 1924.

Callender, C. N., *American Courts—Their Organization and Procedure,* McGraw-Hill Book Company, New York, 1927.

Field, O. P., *Judicial Review of Legislation in Ten Selected States,* Department of Government, Indiana University, Bloomington, 1943.

Haynes, Evan, *The Selection and Tenure of Judges,* National Conference of Judicial Councils, Newark, 1944.

Lepawsky, Albert, *The Judicial System of Metropolitan Chicago,* University of Chicago Press, Chicago, 1932.

Moley, Raymond, *Our Criminal Courts,* Minton, Balch & Company, New York, 1930.

Orfield, L. B., *Criminal Appeals in America,* Little, Brown & Company, Boston, 1939.

Pound, Roscoe, *Organization of Courts,* Little, Brown & Company, Boston, 1940.

Radin, Max, *The Law and Mr. Smith*, The Bobbs-Merrill Company, Indianapolis, 1938.

Smith, R. H., *Justice and the Poor*, rev. ed., Charles Scribner's Sons, New York, 1924.

Warner, S. B., and H. B. Cabot, *Judges and Law Reform*, Vol. IV, Harvard University Press, Cambridge, 1936.

Willoughby, W. F., *Principles of Judicial Administration*, Brookings Institution, Washington, 1929.

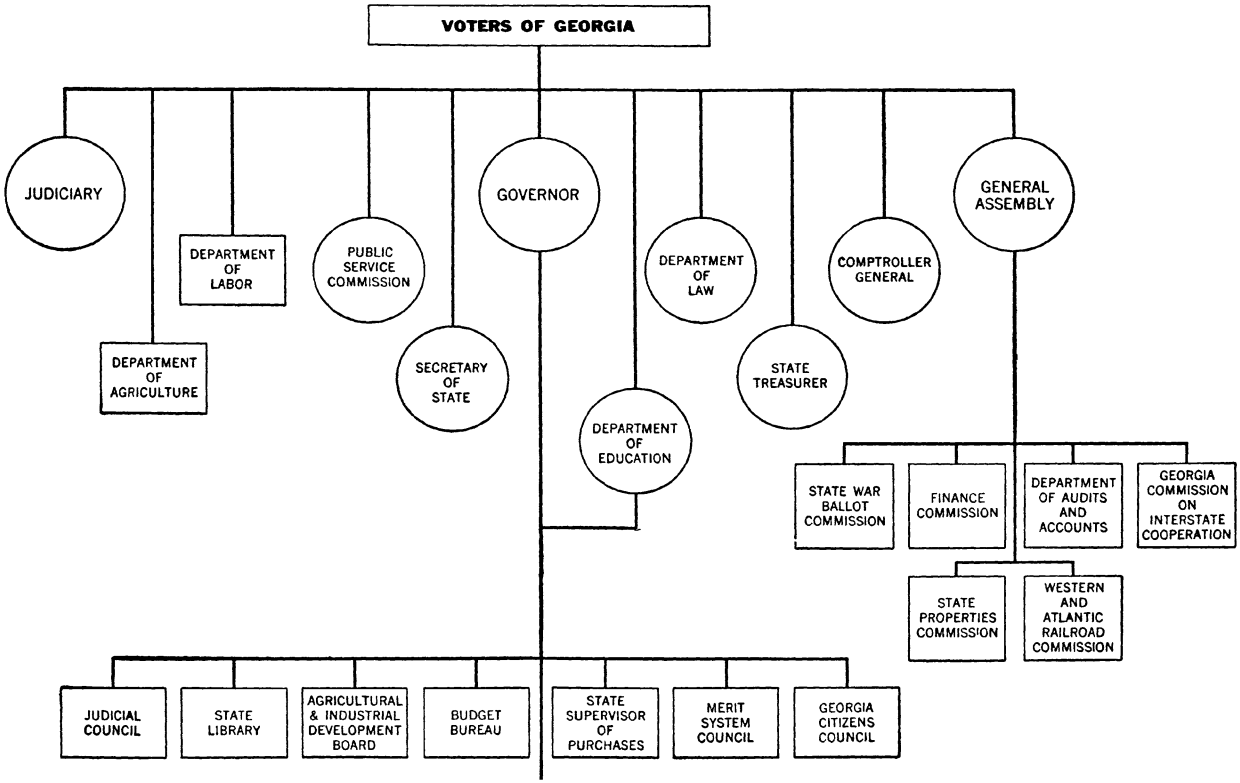
34 · *State Administration*

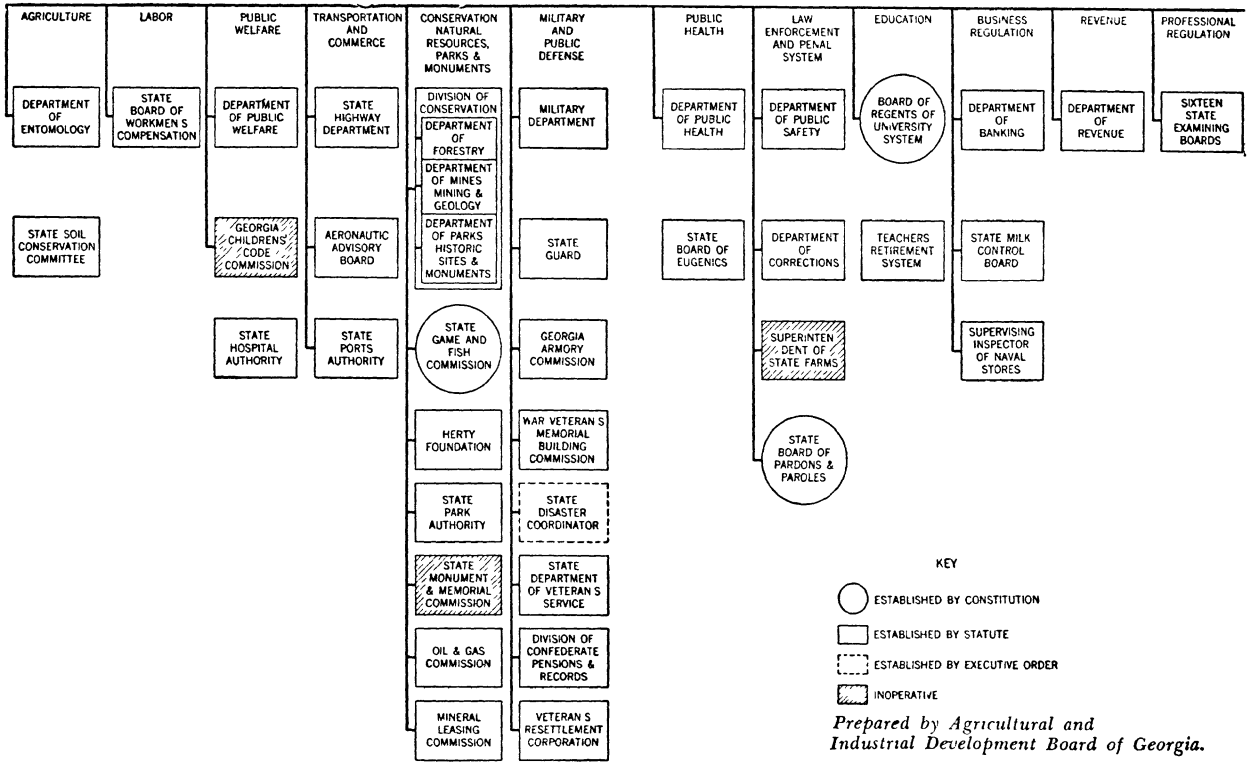
It has been pointed out that the emphasis on the administrative side of government is one of the major characteristics of the current American political scene. The activities of the states in this sphere have perhaps received less publicity than those of the national government, but they are exceedingly important and account in large measure for the notable increase in the cost of state government. Some of them, for example the old-age assistance and dependent-children programs, are closely related to administrative activities of the national government, being controlled as to general standards by the grant-in-aid system of the latter. Others are local in character, depending upon the diverse socioeconomic backgrounds of the several states as well as upon varying political psychology. It is, of course, to be expected that a populous state which is highly industrialized will maintain a more elaborate administrative setup than one which is sparsely settled and agricultural in character. Nevertheless, even the smallest and poorest of the states are currently carrying on administrative programs which would have seemed distinctly ambitious as recently as a decade ago.

ADMINISTRATIVE DEVELOPMENT AMONG STATES

Early Nineteenth Century The states which were in existence a hundred years or more ago found themselves confronted with certain administrative problems which are still to be encountered, though usually in a more complicated form. Even at that early period states found it necessary to raise funds for meeting the expenses of their operations and that involved the levying and collecting of taxes. Records of one kind and another had to be kept by the financial officers as well as by a general functionary commonly designated a secretary of state. A few public works, such as canals and highways, were sometimes undertaken by states, though these were often left in the hands of private toll companies or local

ADMINISTRATIVE STRUCTURE OF GEORGIA STATE GOVERNMENT





Prepared by Agricultural and Industrial Development Board of Georgia.

CHART OF GEORGIA STATE GOVERNMENT

governments. All in all, it would not be accurate to say that there were no administrative tasks to be performed by the states at that time, but in comparison with the elaborate and costly current programs these early efforts seem almost negligible.

The Middle Period Broadening democracy was accompanied by a widespread demand for public educational facilites. The greater part of this burden fell upon the local governments, but the states, encouraged in many instances by the generous provisions of the federal land-grant college act,[1] undertook to set up colleges and universities. In order to co-ordinate the local efforts it increasingly became clear that a state department of public instruction was needed. Then, too, the impact of the industrial revolution on those states which depended upon manufacturing and mining brought about problems which many thoughtful people regarded as calling for state attention. While some factory owners voluntarily maintained proper working conditions, others refused to spend a penny to protect dangerous machinery or to install sanitary facilities. Where workers fell prey to the accidents arising out of their employment, companies usually refused to assume responsibility; yet there were often no private means and hence the taxpayer had to support the victims on a charitable basis. The states finally had to take cognizance of this situation and enact statutes providing for safeguards and eventually for workmen's compensation. The enforcement of such regulations necessitated some administrative machinery. During this middle period the problems of crime and insanity came more and more to the fore, with the result that the endeavors of local governments and private individuals proved inadequate. States, therefore, found themselves faced with the necessity of providing penitentiaries and insane asylums.

The Modern Period Although many of the problems which constitute the basis for state administrative activities date back into the nineteenth century, it has been only during the present century that the states have recognized their full responsibility. Thus to a very considerable extent state administration may be regarded as a development of the last quarter or at most half of a century. The financial problems dating from the very earliest days became increasingly intensified and finally led to elaborate accounting sys-

[1] Some state universities had been established before the national government passed the Morrill Act in 1862.

tems, tax commissions, boards of review, budget bureaus, and state supervision of local finances which will be dealt with in the next chapter. The complex relations existing between labor and capital-management resulted in a general introduction of workmen's compensation commissions as well as labor departments. Educational facilities multiplied; state licensing of teachers became commonplace; state adoption of textbooks and curriculum standards became popular in certain quarters. The farmers and business men demanded administrative agencies which would assist them in dealing with their problems. The ruthless practices of the railroads, electric and gas utilities, telephone companies, and other public-service enterprises made it necessary to establish state commissions for their regulation. The highest crime rate among civilized countries and a rapidly increasing insanity rate rendered the old institutions inadequate and resulted in expanded state departments of correction and institutions. It would require more space than is available to go on with the list of administrative activities which states have assumed during recent years; perhaps it will suffice to remark that there is at present hardly a field of human interest which does not come in for attention by at least some of the states.[2]

The Problem of Piecemeal Growth From the foregoing paragraphs it should be apparent that the administrative side of state government came into being a piece here and a bit there. As new problems arose or as pressure made it expedient to take cognizance of old problems, state legislatures created this agency and added to the responsibilities of that department which already existed. In general, there was a tendency to establish additional administrative agencies to take over new tasks, since that usually provided more jobs which could be used to reward faithful political followers. The result was a conglomeration of agencies of various sorts which often found themselves without clear demarcation as to functions and ordinarily with no central authority to furnish adequate supervision. At the point of greatest confusion New York state discovered that more than 160 administrative agencies were attempting to keep out of each other's way, fighting for the same function, following diverse policies which they had seen fit to adopt, and

[2] For a discussion of the growth of the administrative side of government, see L. D. White, *Introduction to the Study of Public Administration,* rev. ed., The Macmillan Company, New York, 1939, Chap. 2.

otherwise adding to the confusion.[3] Even average-size states frequently found themselves with a hundred separate administrative departments, agencies, commissions, and miscellaneous establishments. The inefficiency, waste, and conflict incident to such a setup reached high levels; the wonder is that the people were willing to tolerate the chaotic situation.

REORGANIZATION EFFORTS

Early in January, 1910, Governor Charles E. Hughes of New York included the following statement in his message to the legislature: "It would be an improvement, I believe, in state administration if the executive responsibility were centered in the governor who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state officers." President Taft's Commission on Economy and Efficiency made a report to Congress in 1912 which stirred up interest among the states and led to the establishment of several state committees of the same character. The New York constitutional convention of 1915 proposed a reorganization in the constitution which it submitted to the voters in that year, but this had the misfortune to be defeated.

Actual Achievements It remained to Illinois to make the first concrete achievement in administrative reorganization in 1917. The elective offices were perforce left untouched because of their constitutional basis, but approximately one hundred departments, boards, and offices were consolidated into ten general departments, having to do with finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, conservation, registration and education, and insurance.[4] Approximately two thirds of the states have followed Illinois in undertaking complete or partial reorganizations of their administrative machinery.

Legal Basis of Reorganization States have accomplished their reorganizations both through constitutional amendment and statu-

[3] See New York Bureau of Municipal Research, *Government of the State of New York: A Survey of Its Organization and Functions*, Institute of Public Administration, New York, 1915.

[4] For a more detailed discussion of the Illinois reorganization, see A. E. Buck, *The Reorganization of States Governments in the United States*, Columbia University Press, New York, 1938, pp. 86-92.

tory enactment, but the latter method has been far more commonplace. In a way it is disappointing that so many of the states have chosen to follow the statutory route because that has in almost every instance necessitated compromise. Constitutions, even of the older variety, often provide for certain elective positions, such as secretary of state, state treasurer, auditor, and commissioner of education; consequently reorganization by statute leaves these offices on an elective basis and more or less independent of the governor. On the other hand, constitutional amendments are regarded with suspicion in some of the states, particularly when they involve far-reaching changes in the administrative departments. Inasmuch as conditions are constantly changing, there is a real objection to freezing administrative organization in constitutional amendment; hence states which use this method are well advised to lay down only broad principles, leaving the details to be added by the general assembly as occasion may arise.

Basic Elements of Reorganization Some states have apparently believed that any reconstruction of administrative agencies, whether arrived at through careful studies or not, constitutes reorganization. Mr. A. E. Buck of the New York Institute of Public Administration, who speaks with authority in this field, has laid down six fundamentals [5] which he maintains actual experience of the states has dictated. Briefly summarized these are as follows:

1. Concentration of authority and responsibility.
2. Departmentalization, or functional integration.
3. Undesirability of boards for purely administrative work.
4. Co-ordination of the staff services of administration.
5. Provision for an independent audit.
6. Recognition of a governor's cabinet.

Most of these items have been discussed in some other connection and do not require detailed elaboration here. In discussing the functions of the governor, for example, it was emphasized that all of the administrative agencies should be directly responsible to that officer and that a governor's cabinet serves a useful purpose.[6] In the chapter succeeding this one the importance of an independent audit is pointed out.[7] Later in this chapter we will examine the board

[5] *Ibid.*, pp. 14-15.
[6] See Chap. 30.
[7] See Chap. 35.

type of organization. At this point, therefore, perhaps it will suffice to stress the necessity of arranging the various functions in a logical rather than a haphazard manner under the general departments which usually emerge from a reorganization effort. If related services are widely separated, there is bound to be lost motion and lack of proper contact. Conversely, if a general department is made up of subdivisions which perform widely varying functions, there is likely to be conflict, lack of integration, and, in short, trouble. It is here that the expert analysis is especially important. But no amount of lip service to the principle of integration will give integration, since that depends upon a careful study of a large number of agencies and functions.

The Number of Departments If a state has not set itself to the task of reorganization, the number of separate administrative departments is likely to be large, even if the state is sparsely populated and dependent for the most part on agriculture. It is not at all uncommon to find anywhere from fifty to one hundred separate departments, boards, offices, and other independent establishments in such a state. Where reorganization has taken place, a great deal depends upon whether it has been partial or complete as well as upon the complexity of the problems. Ordinarily a complete reorganization will consolidate the administrative agencies into anywhere from half a dozen to fifteen general departments. No categorical number can be stipulated for every state because of the diversity of population and problems, but the general rule is that there should be no more than are required to handle satisfactorily the various administrative functions entrusted to the state government. On the other hand, it is not a wise policy to go to an extreme in consolidating, for where functions of widely diverse character are crammed into a single department there will probably be trouble.

Need for Frequent Examination Several states, including California, Virginia, Nebraska, Tennessee, and Washington, have not been content to reorganize their administrative systems and then rest on their oars. Considering the changes which have taken place in the state governments during the last decade, this attitude on the part of a state impresses the observer as a very wise one, for even the best reorganization is likely to become antiquated after a few years have elapsed.

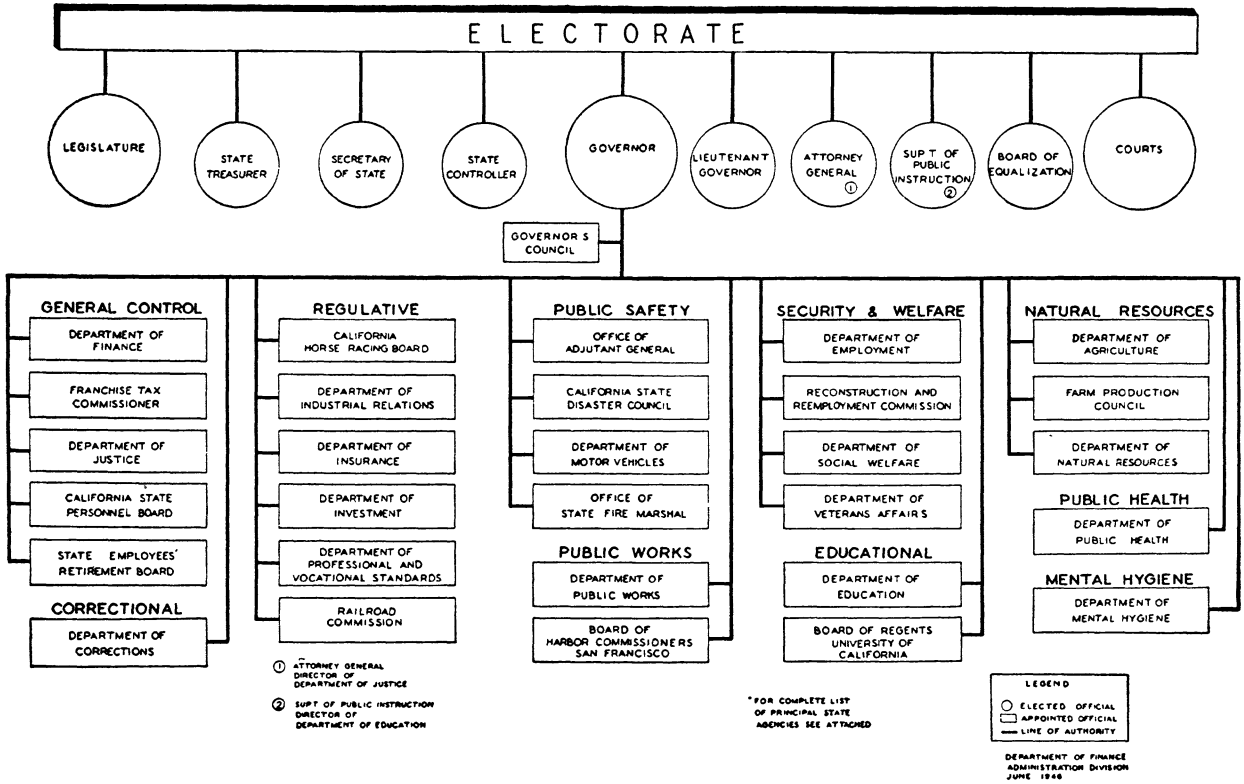


CHART OF CALIFORNIA STATE GOVERNMENT

TYPES OF ADMINISTRATIVE ORGANIZATIONS

There are three principal types of organization which states have chosen for their administrative agencies: (1) single-head, (2) board, and (3) combination. Various modifications of these basic forms may be observed in operation, thus contributing to a complicated picture of organization as a whole.

Single-head Students of public administration generally prefer the administrative agency which is placed in charge of a single head. If a hierarchy is to be established which finally heads up in the governor, the single-head agency is logical. Governors include the directors of single-head departments in their cabinets and find it feasible to deal with complicated administrative problems by holding eight or ten heads responsible for what goes on in their departments. The general departments are subdivided into sections and each one is placed in charge of a chief who is responsible to the department head. Responsibility under such an organizational plan is clearly defined and easily supervised. A single head can be expected to follow a more or less consistent policy in contrast to the compromise decisions which emanate from boards. Action in a single-head department is prompt and decisive, at least in theory. On the other hand, this type of organization does not permit the deliberation and exchange of varying points of view which some consider desirable in certain fields of state activity.

Board The board type of organization has been very popular in the past and continues to find supporters, judging from the practices of the states. In this type three or more persons are placed in charge of an administrative agency and decisions as to what shall be done are arrived at jointly by these board members. An agreement may be made to the effect that certain tasks will be performed by individual members, but important matters are discussed and decided by the board as a whole. This plan permits the representation of diverse interests, embodies the theory of checks and balances in a modified form, and in general encourages deliberation. In practice, it has been found that the members frequently find it impossible to agree, with the result that valuable time may be consumed, deadlocks may result, and compromises will eventually determine the policy. Where prompt and clear-cut action is required, the delay and conflict so often incident to the board type of organi-

zation are very serious weaknesses and may cause almost a breakdown in operation. However, if a policy has to be worked out of many diverse points of view and there is no particular haste, the board may offer advantages. Public-service regulatory agencies and other quasi-judicial departments almost invariably fall into this category. Ordinarily it is agreed that the size of boards should be kept within reasonable limits; hence those which have more than advisory functions usually consist of from three to nine members.

Combination Type In order to avoid the weaknesses of the two types discussed above and to realize the advantages which they afford, there has been a hybrid plan developed which makes use of both. A board is used to determine policies; an administrator is at hand to see that the policies are put into effect and to take charge of the routine work of the department. Thus it is possible to have different points of view represented and policies worked out which will recognize diverse interests. At the same time the delay and conflict of the pure board type of organization are minimized. Perhaps the chief problem in this type is to define the role of the board and set forth the duties of the administrator. Experience has indicated that it is not enough to leave a division of authority up to those involved, for an ambitious administrator may attempt to relegate the board to a place of insignificance, while a meddlesome board may interfere to such an extent in the routine operation of the agency that the life of the administrator becomes intolerable. On the surface it does not seem particularly difficult to draw the line between the functions entrusted to each, but in practice this is frequently almost impossible. This plan of organization has been used most commonly in connection with education, public health, and public welfare.

Organization under a Decentralized System In those states which have not undertaken an administrative reorganization it is probable that all of the three types described here will be found. The older departments will doubtless be in charge of an elective official, such as the state treasurer or secretary of state. Newer departments having to do with public works and related functions may well be headed by directors appointed by and responsible to the governor. Boards may be expected in the case of the public-service commission, the civil service agency, and the state universities. Departments having to do with welfare, health, and education may

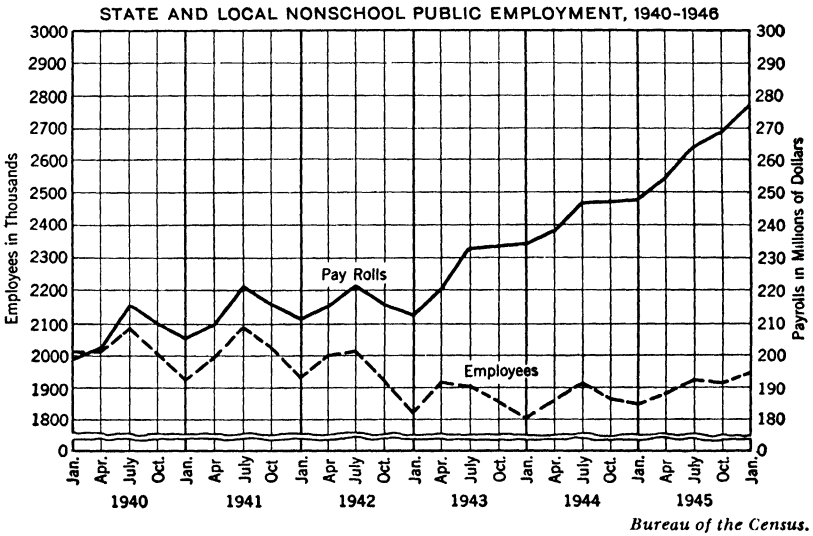
follow the board or the single-head plan, but in many instances they will make use of the combination plan.

Organization under a Centralized System In those states which have reorganized their administrative departments there is likely to be greater uniformity of pattern, but even so, all three types of organization may find a place. If all of the administrative agencies have been consolidated into eight to fifteen general departments, it is probable that the single-head type will be used as far as possible. However, inasmuch as the states have not ordinarily employed constitutional amendments to accomplish reorganization, there may be several departments which are headed by officials elected by the voters rather than appointed by and responsible to the governor. While the single-head type is generally preferred under the centralized system, it is not uncommon to find a combination plan used, with the director given a board for advisory purposes. The board in its pure form is ordinarily less popular under the centralized system, though it always finds a place somewhere in connection with administration. Those states which have only partially reorganized may leave the regulatory boards, such as the public-service commission, untouched and more or less to the side of the main structure. Where reorganization covers everything, regulatory commissions need to be integrated with the other agencies; hence they may be placed under one of the general departments in a more or less autonomous position.

STAFF AND LINE SERVICES

The administrative services which the states provide fall into two general classes: staff and line. Staff services include such activities as personnel, finance, planning, the keeping of records, the purchasing of supplies, and the furnishing of legal advice. These do not directly affect the citizens but are highly important in the general operations of state government. Line services, on the other hand, are those which a state furnishes its inhabitants: for example, educational facilities, protection of person and property, old-age assistance, and the regulation of public-utility rates. In the remainder of this chapter and the next chapter we shall give attention to the staff and line services which are being carried on by the forty-eight states.

Though all of the states together do not have as large a pay roll as the national government, they employ some six hundred thousand persons in various capacities. The relationship between superior governmental standards and the qualifications of state employees is very intimate; indeed it is not too much to say that nothing can make up for the lack of well-trained and conscientious public servants.[8] All too many of the states have not realized this.



Bureau of the Census.

In the chapter devoted to the functions of the governor[9] it was pointed out how large a place the spoils system has had in filling the rank and file of state jobs, resulting sometimes in the throwing out of more than 90 per cent of all employees in favor of the protégés of the party which has recently been victorious at the polls. There is no purpose in repeating that discussion here—indeed, it hardly belongs under the label "public personnel administration"

[8] For a discussion of this problem, see W. E. Mosher and J. D. Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941.

[9] See Chap. 30.

at all, since the filling of jobs is done by political captains and committees rather than by the state itself. An increasingly large number of states are taking cognizance of the intolerable character of the spoils system as a method of making appointments to public positions and their accomplishments deserve attention.

Growth of the Merit System As far back as 1883 New York established a public personnel system which was based at least in theory on the principle that state jobs should be filled by those who have adequate training, experience, and personal qualifications. Two years later Massachusetts followed suit. Unfortunately the other states long remained indifferent, and it was not until 1905 that Wisconsin and Illinois provided for civil service machinery. Again there seemed some likelihood that many of the states would follow the example set by these four states, particularly after Colorado and New Jersey [10] had joined the group. But only three states, California, Maryland, and Ohio,[11] were added to the list during the next thirty years. Then came the federal social security program with its emphasis upon merit administration and this together with other factors caused eleven states to make provision for public personnel systems during the years 1937-1944.[12] Not quite half of the forty-eight states have made provision for public personnel systems which cover all or a considerable portion of their state employees below the rank of agency chief. The remaining states cannot point to extensive merit coverage, but they are compelled to tolerate more or less modern personnel machinery as far as their social security agencies are concerned because of the standards stipulated in the grant-in-aid program of the national government.[13]

Variation in Public Personnel Standards It might be supposed that the formal adoption of the merit principle as a basis for public employment would automatically result in the establishment of efficient public personnel agencies. Unfortunately it is not safe to make that assumption, since some states have contented themselves with little more than lip service to the merit system. Thus

[10] Colorado and New Jersey established systems in 1907 and 1908 respectively.
[11] California and Ohio made provision for such a system in 1913, while Maryland did not take action until 1921.
[12] These states were: Alabama, Connecticut, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, Rhode Island, Virginia, and Tennessee.
[13] For a table showing the provisions in these states, see the most recent *Book of the States.*

when it is stated that approximately half of the states have placed all or a substantial part of their employees under the merit system, it must not be concluded that all is necessarily well in those states. A few of these states can point to reasonably consistent records, but most of those which have had any considerable experience have found the fight a difficult one. Unfriendly legislatures and governors have at times virtually brought the systems to nought by refusing appropriations, appointing political henchmen to administer the machinery, and evading the fundamental requirement of permanent tenure by making large numbers of temporary appointments. During the last decade or so there has been a rising sentiment among the people in favor of modern personnel practices in public employment and that has done much to bolster up the state systems. Though there is much room for improvement in the states now operating under the merit principle, it is encouraging to note that standards have recently reached an all-time high.

Legal Basis Several of the states which have modern personnel practices have written provisions into their state constitutions relating to such services. But most of the states depend entirely upon statutory authorization. In general, there is much to be said in favor of founding a personnel agency upon a constitutional amendment, especially if the amendment is carefully drafted. However, the nature of the amending process and public sentiment are such in some states that it is almost necessary to rely on ordinary statute, as unstable as that may sometimes be.

Civil Service Machinery In most states a board of at least three members, representing the two major political parties, is created to determine policies and supervise the civil service machinery. The members of these boards are usually not full-time state officials. The approved practice is to employ a professionally trained person on a full-time basis to administer the program under the supervision of the board. Under this director or manager there are numerous examiners, clerks, stenographers, investigators, and other employees.

Increase in Technicians Even in the backward states there has been a notable increase in the number of professional and scientific workers in state employment during recent years. The assumption by the states of functions having to do with health, public welfare, education, laboratory experimentation, housing, pub-

lic utilities, and many other more or less technical fields doubtless enters into this trend. But in addition there is a growing recognition even among political henchmen that some state positions require more than party faithfulness, physical fitness, and good intentions. Needless to say, the induction of these technically trained people has had a very wholesome effect, improving standards even in those departments which are most intimately tied up with politics.

RECORDS, PLANNING, AND MISCELLANEOUS STAFF FUNCTIONS

Keeping of Records With state administration reaching new highs, it is obvious that there is an immense amount of work to be done in keeping records. Almost all of the administrative departments do this to a greater or less extent, but the offices of secretary of state, state treasurer, and state comptroller or auditor are especially important in this connection. The keeping of financial records will be discussed later; it remains here to look briefly at the functions of the office of secretary of state. Every state maintains such an office which has long been a sort of odds-and-ends department. Election laws are usually administered by this department; likewise this department ordinarily acts as custodian of legislative bills, acts, records, and so forth. In most of the states the secretary of state publishes the statutes which are enacted by each session of the general assembly, attests executive documents, and has charge of the state archives. In some states this department keeps a register of motor vehicles and registers securities.

State Planning Activities As state problems have become more complicated, it has been increasingly apparent that planning is essential if substantial progress is to be made. Almost every state administrative agency which is at all alert carries on a certain amount of planning, but in addition numerous planning commissions and boards have been set up to draft broader plans, particularly in the conservation, land-use, and economic fields. At one time every state provided either by statute or executive order for a planning agency, but in several instances these have been abolished or allowed to lapse. Unfortunately there has been no widespread sentiment for the adequate support of these agencies, perhaps because the rank and file of the people have had little understanding of what they were expected to do. In some instances planning boards have been sinecures for political favorites, with little or nothing to show for

the expenditures of state funds. Considering the magnitude of the problems confronting the states as natural resources are depleted, it would seem that this type of work deserves more generous attention and support.[14]

Law Departments All of the states maintain legal departments which are headed by attorneys general. Much of the work of these departments relates to the courts and is dealt with in that connection,[15] but in addition general legal services are furnished the administrative departments. Legal questions are constantly arising in connection with administrative activities—in some agencies so frequently that a special representative of the attorney-general's office is maintained on a full-time basis in those departments.

Central Purchasing The administrative agencies of a state require various sorts of supplies. Some of these may be needed only by a single agency and in small quantities; others may be used by every department and in large quantities. At one time it was the common practice to permit each department to purchase its own supplies from whatever source it desired, but this policy proved unsatisfactory. Decentralized purchasing made it impossible to secure low prices that usually accompany quantity purchasing; moreover, it encouraged buying from political favorites who often expected the state to pay a high price for inferior products. Almost all of the states make provisions for central purchasing agents or bureaus, though in some instances these are not given authority over all departments. The approved practice is to purchase all supplies which are needed in quantity through a central agency, on the basis of carefully drafted specifications, and as a result of competitive bidding.[16] Small purchases are frequently left to the various agencies, since no savings are likely and indeed the cost of central purchasing may actually be greater because of the orders, delivery charges, and so forth, incident to central purchasing.

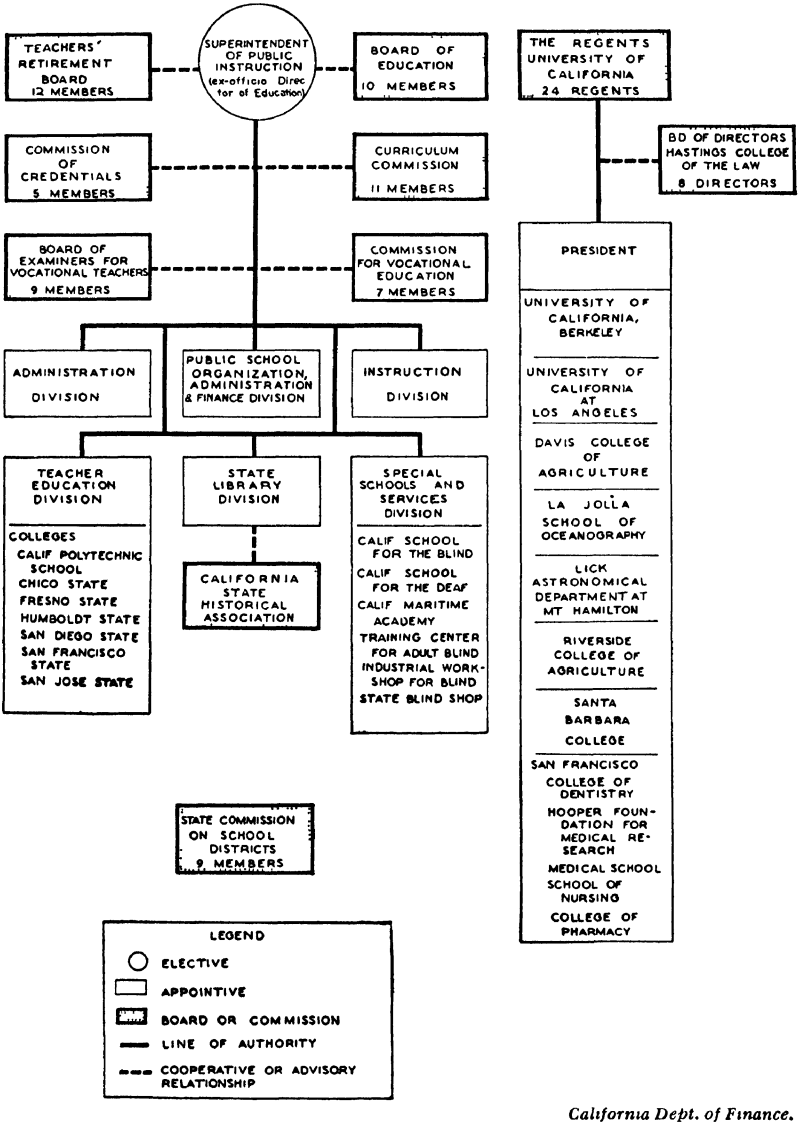
EDUCATION

From the standpoint of money expended as well as general significance the educational activities of the forty-eight states have

[14] A few states are exceptions to the rule. For example, Montana in 1945 provided $4,500,000 for a long-range program.

[15] See Chap. 33.

[16] For additional discussion of this topic, see Russell Forbes, *Governmental Purchasing*, Harper & Brothers, New York, 1929.



California Dept. of Finance.

CALIFORNIA EDUCATIONAL AGENCIES

for many years stood at the top of the list. Some states have taken this responsibility more seriously than others, perhaps because of recognition of the importance of these facilities or again because they have had the financial resources that make elaborate programs possible. Consequently the standards in some states are relatively superior; in contrast, several states make a relatively poor showing, with quite inadequate buildings and equipment, teachers who have had comparatively little preparation, and school terms that cover only seven months or so.

State and Local Relations Though the states carry on some educational programs which directly involve the people, most of the actual operation of public schools is left to the cities, school districts, townships, counties, and other local governments. Nevertheless, the states ordinarily take a hand in the conduct of elementary and secondary schools by setting up certain standards which have to be met and by making grants of money to assist the local authorities.

State Educational Departments Every one of the forty-eight states maintains an administrative agency in the field of education headed by a State Superintendent of Public Instruction or Commissioner of Education. Subdivisions of the general department are frequently created to handle elementary schools, secondary schools, colleges and universities, teacher training, licensing of teachers, curriculum building, vocational training, and pupil health.

General Educational Activities Virtually all of the states now have regulations which compel youths up to sixteen years of age to attend school unless excused for reasons of physical incapacity, mental inadequacy, and a very few other causes. Some three fourths of the states maintain equalization funds which are employed to assist the poorer sections in raising their standards to such a point that the entire educational system of the state may be reasonably satisfactory. Approximately half of the states specify minimum salaries to be paid to teachers, even paying several hundred dollars per year out of the state treasury toward the salary of every teacher in approved schools. One of the most important activities of state departments of education has to do with the licensing of teachers. Well over half of the states at present stipulate that all public-school teachers must have at least two years of educational training beyond high school; the most progressive states have already reached

or are rapidly approaching the point where graduation from a four-year college is required even for elementary-school licenses. In the more centralized states the departments of education have far-reaching powers in setting up the curriculum and specifying the texts to be used.

State Institutions of Higher Education Perhaps the most publicized educational activity carried on directly by states is that of operating institutions of higher learning. This, it may be added, is ordinarily not entrusted to the department of education, but to boards of regents or trustees appointed by the governor or elected by the voters. All of the states now furnish some educational opportunities beyond the secondary-school level. Forty-eight states [17] have state universities or colleges. Some of these universities and colleges have already celebrated their centennials, while others do not antedate the present century. The states do not follow a uniform policy in co-ordinating their efforts in the field of higher education, though it would seem that a reasonable amount of integration would be wise. Illinois, Wisconsin, California, Minnesota, and Nebraska, for example, maintain single universities which furnish training in the arts and sciences, agriculture, engineering, law, medicine, commerce and a number of other fields. Iowa, Kansas, Michigan, Washington, and Indiana, on the other hand, support two large institutions: one supposedly the university which stresses arts and sciences and professional fields such as law and medicine, and another an institution which concentrates on agriculture and engineering. In reality the dividing line has frequently been broken down during recent years, with the result that both carry on arts and science instruction. A number of other states have diversified even further. Thus Ohio has the Ohio State University at Columbus which has an agricultural school as well as arts and professional schools; Miami and Ohio Universities which carry on arts and science, commerce, and teacher-training instruction; and Kent and Bowling Green which, though once teacher-training schools, now enjoy university status. Texas, New Mexico, Colorado, and several other states maintain universities, schools of agriculture and mechanics, mining colleges, and occasionally even military schools.

[17] New York did not maintain a state university prior to 1948, but legislation passed in that year authorized a state system of higher education.

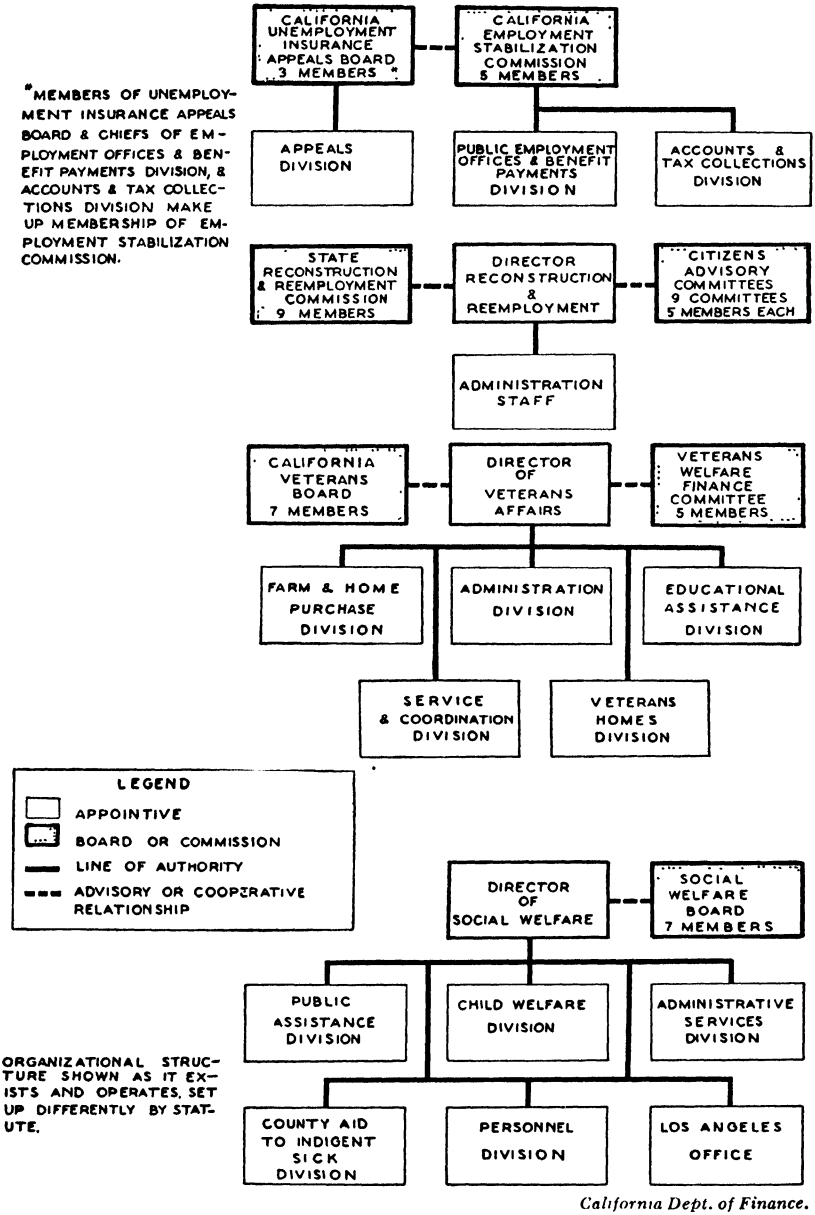
Activities of State Universities In addition to furnishing ordinary instruction in the arts and sciences, the professions, agriculture, mechanics, home economics, teaching, fine arts, and divers other fields too numerous to list, state universities often place great emphasis upon community leadership, athletics, adult education, and public service. Elaborate extension divisions seek to make contact with virtually every inhabitant of the state, especially those who live outside of large cities. The athletic prowess of the middle-western, southern, and western state universities is too well known to require mention. Extension courses frequently extend educational opportunities to large numbers of those who otherwise could not enjoy them. All in all, the institutions of higher learning operated by the states are extraordinarily alert, particularly in comparison with foreign universities which receive public support.

PUBLIC WELFARE AND HEALTH

Until comparatively recently states have not been notably active in the public welfare field, though some of them have carried on limited programs that began far back in the nineteenth century. The national social security program gave impetus to the state welfare programs; indeed within a single year after the enactment of the fundamental federal social security act some eighteen states set up departments of public welfare. At the present time every state in the union has a department of state government which devotes itself to public welfare and these are usually among the largest and busiest departments to be found in a state capital.[18]

State Social Security Activities The social security program in general has already been discussed in connection with the national government.[19] Unemployment insurance, old-age insurance, old-age assistance, pensions for the blind, and the several programs designed to assist crippled and dependent children are either entirely controlled by the national government or in large measure carried on under its supervision through the medium of grants-in-aid. The states ordinarily act as intermediaries between the Federal Security Agency and the county departments of public welfare which carry

[18] For detailed discussion of these agencies, see Marietta Stevenson, *Public Welfare Administration*, The Macmillan Company, New York, 1938.
[19] See Chap. 26.



California Dept. of Finance.

CALIFORNIA SECURITY AND WELFARE AGENCIES

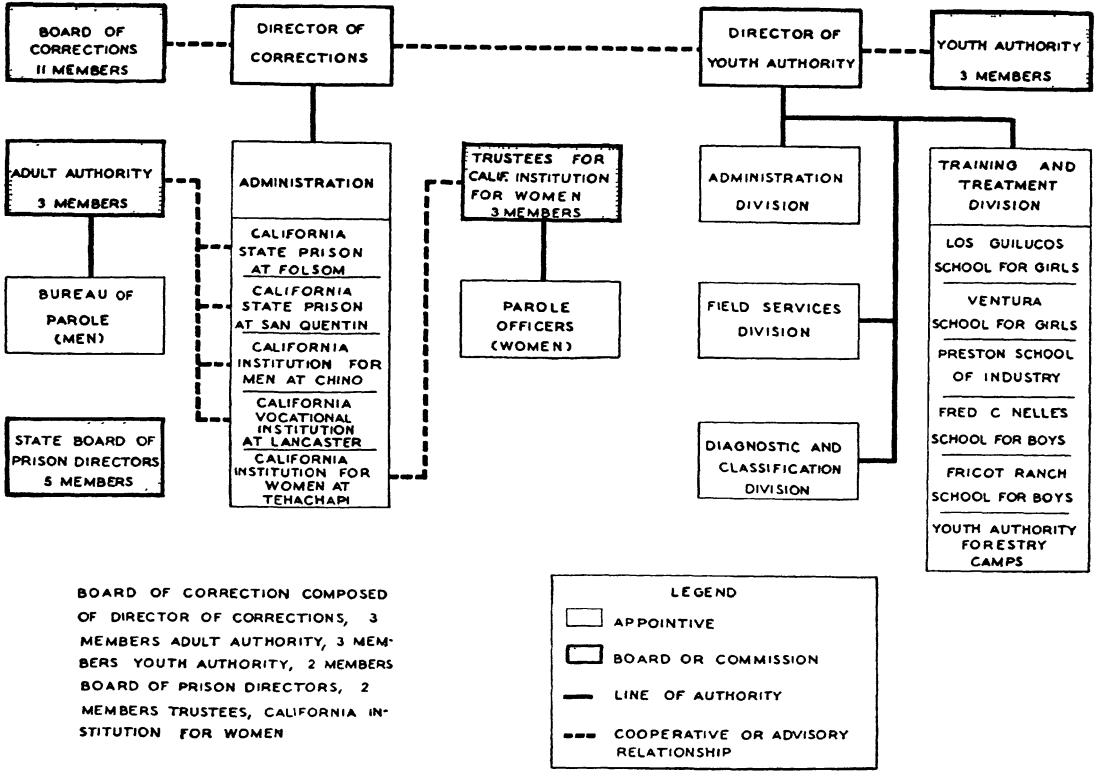
on much of the direct work. The states receive the federal funds, contribute funds from their treasuries, and collect the money assessed on the counties or other local governments for this purpose, finally paying the accumulation to the recipients.[20] In addition, the states supervise and offer expert advice to the local welfare departments, being responsible to the national government for the maintenance of stipulated standards. In addition to supervising much of the federal social security program, the states frequently assume responsibilities in connection with direct poor relief.

Public Housing Intimately related to public welfare, although often technically separated from it, is public housing. In contrast to European countries the United States has been almost unbelievably backward in seeking to outlaw slums and provide decent living conditions for its inhabitants. The various efforts of the national government to promote adequate housing have been discussed at an earlier point,[21] but it remains here to note what the states are doing. A few states tried to grapple with the housing problem before the national government entered the field, but most of the interest on the part of the states dates from 1935. At present almost all of the states have made some provision for housing agencies. The amount of building completed, under construction, and in the planning stage is hardly more than a drop in the bucket, but it is significant in that it indicates that the states have at last become conscious of the problem.

Public Health Almost a century ago a movement started in the direction of state responsibility for public health. Epidemics, such as cholera, smallpox, scarlet fever, yellow fever, and diphtheria, swept beyond the bounds of local communities and before they had subsided caused the deaths of multitudes of people. No one locality could deal effectively with the problem because after the contagion had become general it was too late to cope with the situation. At the present time every state maintains some sort of agency which is charged with promoting public health. In general, the state departments carry on research, collect vital statistics, license doctors, and inspect the various sections of the state, but they do not perform all of the basic functions for these are entrusted to local health

[20] This money may be turned over to counties to be disbursed, but states often make the payments themselves.

[21] See Chap. 26.



California Dept. of Finance.

CALIFORNIA CORRECTIONAL AGENCIES

authorities. Hence the state agencies devote large amounts of their time and energy to supervision of local health efforts, sometimes going so far as to remove local officials from office if they are derelict in their duties.

Institutions One of the heaviest burdens carried by the states is in connection with the operation of various types of institutions for the care of the mentally unbalanced, the chronically ill, and the law violators. The stress and strain of modern society has caused increasingly large numbers of people to fall into these classes and the state has been called upon to provide facilities for their care. Again and again states have built new hospitals and prisons and enlarged old ones, thinking that they had relieved the need at least for a decade or so, only to find that congestion seems to be able to keep abreast of or even outdistance the construction of new institutions. Many different types of institutions are to be found in the forty-eight states: tuberculosis hospitals, hospitals for mothers and children, epileptic centers, industrial farms, schools for problem children, penitentiaries, and homes for feeble-minded.

Wages and Hours Laws During recent years there has been considerable interest in certain states in minimum-wage and maximum-hour laws, particularly as applied to minors and women. Some of the legislation has been inspired by the activities of the national government in this field, but states such as New York and Massachusetts have for many years been alert to the relationship between reasonable hours and minimum wages and good health and morals. The early efforts of the states encountered the barrier set up by the decisions of the Supreme Court of the United States; when that court reversed itself in 1937,[22] the way became open for state action. At present almost all of the states have on their statute books maximum-hour legislation, while more than half have set up minimum-wage standards for women or women and children.

Workmen's Compensation Under the common law it was a very difficult matter for an injured worker to obtain compensation from his employer. He had to go to court and prove that he had not contributed to the accident by his own negligence, which would have been hard enough under any circumstances, but with the shrewd legal counsel retained by the employer to raise ques-

[22] See *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379 (1937). In this case the court specifically overruled the earlier Adkins case.

tions became almost impossible in many instances. Public opinion after long lethargy finally became aroused to the iniquities of this situation and the result is that every state in the United States has now abandoned, at least in part, the common-law principle.[23] However, there is much diversity in the statutes which apply to injuries. Some states limit workmen's compensation to industrial workers, while others include clerical and indeed almost all types of employees. It must be remembered that the injury must arise out of course of employment. In general, negligence on the part of a worker during working hours does not affect compensation.

BUSINESS AND FINANCE

Chartering and Supervising of Corporations Although many corporations carry on activities in more than a single state, the rule remains that the chartering of corporations belongs to the states rather than to the federal government. Some of the states have strict laws in regard to the chartering of corporations and supervise corporations which they charter quite effectively, while Delaware and other states prefer to follow a much more easy-going policy. The result is that while some corporations are as carefully controlled as would be the case under federal auspices, others manage to do about as they please.

Banking and Insurance All of the states provide for the chartering of state banks and consequently find it necessary to establish administrative agencies which inspect and supervise banking institutions. The states vary in their practices, with some insisting upon standards which approximate those stipulated by the national government in the case of national banks and others choosing to follow a more tolerant course. While insurance is ordinarily written by companies or associations which extend beyond the confines of a single state, it is the current practice to insist upon state regulation. In many instances an insurance company must be licensed before it can do business in a given state. Before a license can be received it is necessary to demonstrate financial soundness and perhaps to deposit funds with the state to guarantee payment of obligations within that state.

[23] For an authoritative treatise dealing with the various state systems, see W. F. Dodd, *Administration of Workmen's Compensation Laws*, Commonwealth Fund, New York, 1937.

Securities Though the people of the United States are reputed to be shrewd when financial matters are at stake and indeed may be charged with being "dollar grabbers" by foreign critics, they are actually gullible in all too many instances. The federal Securities and Exchange Commission has alleviated the situation somewhat, but its authority is limited to those companies which do business in more than one state, use the mails to promote their business, and issue relatively large amounts of stocks or bonds. This leaves a large field which the states must assume responsibility for, unless their citizens are to be cheated out of large amounts of money. Although wild cat promoters had almost a clear field a few years ago, it is now commonplace to require the registration of securities with state departments which investigate more or less carefully to ascertain the resources backing the stocks or bonds.

Public Utilities In many business enterprises it is possible for the customer to choose the particular merchant or store which he will patronize. However, in the case of utilities which furnish electric current, gas, telephone service, and at times water, the situation is quite different, since there is only a single company of each variety operating in a locality. Recognizing this fact, states have established regulatory agencies which approve the rates and supervise the service of public utilities which operate within their borders.[24] Some states go even beyond this and require the utilities to submit for approval their contracts with other utilities, their security issues, and other financial practices.

MISCELLANEOUS ACTIVITIES

State Police For many years states relied on the counties, cities, and other local governments to maintain general law and order and this proved reasonably satisfactory. But with the improving of roads and the perfection of speedy automobiles these local police forces found it increasingly difficult to cope with some of the most dangerous public enemies. Moreover, the integration of hard-surfaced highways into state-wide systems presented the problem of enforcing speed and safety laws. At the present time every state maintains a police force for patrolling state high-

[24] For detailed treatment of this topic, see W. E. Mosher and F. G. Crawford, *Public Utility Regulation*, Harper & Brothers, New York, 1933.

ways, while two thirds of the states give their police general oversight of the enforcement of state laws in co-operation with the local police authorities. State police may arrest violators of state laws; they may be called in by the local police to assist in the handling of homicide and other difficult cases; they frequently provide fingerprint files as well as laboratory facilities for analyzing blood stains, photographing clues, and otherwise identifying guilty persons.

Highways All of the states now maintain elaborate systems of highways. These are usually constructed in the first place under federal grants-in-aid which represent about half of the cost, but they have to be kept in repair, marked, and in the northern states cleared of snow in the winter by the states themselves.

Agriculture In addition to agricultural colleges most of the states find it desirable to set up administrative agencies dealing with agriculture. These departments may run the state fair, establish quarantines against fruit, grain, and livestock diseases and pests, circulate bulletins and perform other functions of interest to farmers. Under a progressive setup the state agricultural department works intimately with the agricultural college, supplementing and assisting rather than competing and duplicating.

Conservation More and more of the states are giving their attention to the conservation of natural resources, the development of state parks and recreational facilities, the planting of state forests, and various other related items. Fish and game receive some protection and may be taken legally in all of the states only by those who are licensed, but the record in other conservation activities is less impressive. Two thirds of the states go so far as to support departments or bureaus of conservation, sometimes grouping two or three functions including conservation together under a single agency.

Selected Bibliography

Bates, F. G., and O. P. Field, *State Government*, rev. ed., Harper & Brothers, New York, 1939, Chaps. 12-13.

Benson, G. C. S., *The Administration of the Civil Service in Massachusetts*, Harvard University Press, Cambridge, 1935.

——, and E. H. Litchfield, *The State Administrative Board in Michigan*, University of Michigan Press, Ann Arbor, 1938.

Book of the States, The, Council of State Governments and American Legislators' Association, Chicago, published biennially.

Brookings Institution, *Organization and Administration of Oklahoma*, Harlow Publishing Company, Oklahoma City, 1935.

Buck, A. E., *State Administrative Reorganization in the United States*, Columbia University Press, New York, 1938.

Carleton, R. L., *The Reorganization and Consolidation of State Administration in Louisiana*, Louisiana State University Press, Baton Rouge, 1937.

Coleman, J. K., *State Administration in South Carolina*, Columbia University Press, New York, 1935.

Combs, W. H., and W. E. Cole, *Tennessee; A Political Study*, University of Tennessee Press, Knoxville, 1940.

Dorr, H. M., *Administrative Organization of State Government in Michigan*, University of Michigan Bureau of Governmental Research, Ann Arbor, 1935.

Hurt, E., *California State Government*, California State Department of Finance, Sacramento, 1937.

Joint Legislative Committee on Finance, *A Survey of the Government of Pennsylvania*, State Printer, Harrisburg, 1934.

Michigan State Budget Office, *A Manual of State Administrative Organization in Michigan*, University of Michigan Press, Ann Arbor, 1940.

Millspaugh, A. C., *Public Welfare Administration*, Brookings Institution, Washington, 1935.

Mosher, W. E., and F. G. Crawford, *Public Utility Regulation*, Harper & Brothers, New York, 1933.

——, and J. D. Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941.

Pfiffner, J. M., *Public Administration*, rev. ed., The Ronald Press Company, New York, 1947.

Porter, Kirk, *State Administration*, F. S. Crofts & Company, New York, 1938.

Smith, Bruce, *Police Systems in the United States*, Harper & Brothers, New York, 1940.

Stevenson, Marietta, and Alice MacDonald, *State and Local Public Welfare Agencies*, American Public Welfare Association, Chicago, 1939.

Truman, D. B., *Administrative Decentralization*, University of Chicago Press, Chicago, 1941.

Walker, Harvey, *Public Administration in the United States,* Farrar & Rinehart, New York, 1937.

White, Leonard D., *Introduction to the Study of Public Administration,* rev. ed., The Macmillan Company, New York, 1939.

35 · *State Finances*

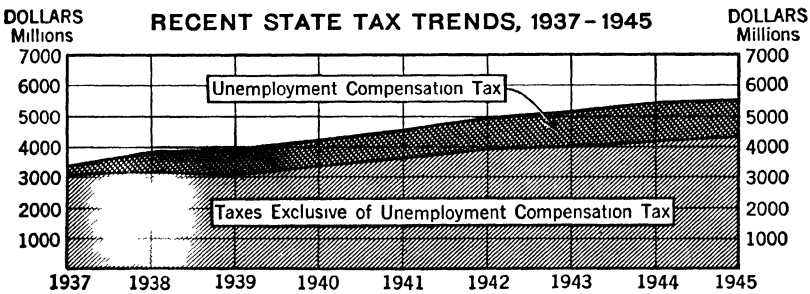
General Problem The forty-eight states are far from uniform in financial practices. During the past decade some of them have found it difficult to meet current expenses; others have been so fortunate as to have substantial balances in their treasuries after paying all bills. The bonded indebtedness of some of the states is high enough to occasion considerable concern to those who bother themselves about such matters. At the other extreme there are states which have very small indebtedness and find it comparatively easy to meet interest and principal payments. In general, states have found their financial problems rather serious, though they have been assisted very materially by the federal government in meeting charges that otherwise might have severely taxed their resources. The search for new sources of revenue has been carried on more or less assiduously by all of the states. If one compares the increase in state expenditures or indebtedness during the past decade or so with corresponding items in the national government, it may seem that the states are quite fortunate inasmuch as there has been less of the spectacular soaring to be noted in the case of the latter. However, it should be borne in mind that the states have nothing like the credit or resources which are at the command of the national government. Thus an indebtedness of less than $3,000,000,000[1] on the part of the forty-eight states may appear almost insignificant in these days, but it is actually a relatively heavy burden.[2]

[1] The gross debts of the states amounted to $2,370,208,000 in 1946. However, it should be noted that substantial additional amounts have been borrowed during 1947 and 1948 to finance bonuses for veterans. This compares with $2,895,845,000 in 1932. However, in 1922 the total was only $1,162,651,000. See the *Book of the States, 1945-1946*, Council of State Governments and American Legislators' Association, Chicago, 1945, p. 193.

[2] For additional discussions of this general problem, see the standard texts in public finance by H. L. Lutz, M. H. Hunter, C. L. King, C. C. Plehn, M. C. Mills, J. P. Jensen, G. W. Starr, and A. G. Buehler.

SOURCES OF STATE REVENUES

Not many years ago it was taken for granted that the main source of state revenue would always be the general property tax, for that had been depended upon for many decades as an old stand-by. The general property tax is still an important source of revenue in some of the states, but it has more and more been supplanted by other revenue producers, until in several of the states it is now reserved entirely to the local governments.[3] The list of sources to which the states now look for their income is both long and varied. In addition to the general property tax, there are income taxes of both the net and gross variety, sales taxes of many



Bureau of the Census.

kinds, inheritance taxes, corporation taxes, intangibles taxes, franchise taxes, capital stock taxes, and poll taxes. These are supplemented by an array of license fees which must be paid by automobile owners, automobile drivers, operators of hotels and restaurants, venders of spirituous liquors, merchants, and others. Grants-in-aid from the federal Treasury, which were insignificant as a source of state income prior to 1933, have increased until they account for approximately one tenth of the receipts of the several states. Finally, there are numerous miscellaneous items which are not to be ignored, though they individually seldom produce very large amounts. Among these may be mentioned: fines, profit on the sale of liquor at state dispensaries, tuition from state schools, earnings of prisons and other state institutions, sale of state land, and royalties from oil wells on state property. Total state revenues currently exceed $7,000,000,000 per year.

[3] Illinois and New York, for example, do not depend upon this tax at present.

General Property Tax Before the demands on state governments became so heavy, it was the general practice to list all of the real and personal property in a state and to apportion the cost of running the state government among the owners of this property according to the amount which they held. But as the cost of state government increased and the counties, cities, and towns found it necessary to draw more and more heavily upon this source, the total tax rate reached a point where owners of property first protested vigorously and then took steps to safeguard their interests. Inasmuch as the local governments were not in a position to shift their collections to other sources, it fell to the lot of the states to look about for other types of revenue. A few of the states have abandoned the general property tax entirely in favor of their subdivisions, but most of them supplement it with an array of other taxes, licenses, and fees. If one omits the grants-in-aid paid out of the national Treasury to states and considers only those amounts collected by the states themselves from various sources, the general property tax now accounts for only about 3 per cent of the total receipts.[4]

Assessment Inasmuch as the general property tax is collected on land, buildings, and personal property of both the tangible and intangible varieties, one of the first steps which has to be taken is the listing of all such property along with estimates of the value thereof. State tax commissions often perform this task in connection with the holdings of railroads and other large corporations which own large amounts of property scattered over a state and which by its very nature presents many difficult problems. However, the general work of assessing is entrusted to the counties, the townships, or the cities depending upon the state, and the state then proceeds to use these assessments as a basis for levying its taxes. The valuation of land and buildings is made annually by slightly more than half of the states and every two or four years in most of the remainder, though there are cases of five-year, six-year, ten-year, and indefinite assessment.[5]

Fixing the Tax Rate When the proper state authorities have

[4] Out of a total revenue of $7,246,000,000 in 1946 all property taxes produced only $253,000,000.

[5] Connecticut provides for decennial assessment; Ohio uses the six-year period; and Maryland specifies assessment at five-year intervals.

determined what amount has to be raised by general property taxes, they compute the tax rate by dividing this amount by the total assessed valuation of all real and personal property in the state. The tax rate is then expressed in terms of so many mills, so many cents, or so many dollars; thus it is said that the current tax rate is 15 mills on the dollar of assessed valuation or 85 cents per $100 or $7.50 per $1,000. In a number of states the maximum tax rate is fixed by statute or constitutional provision.

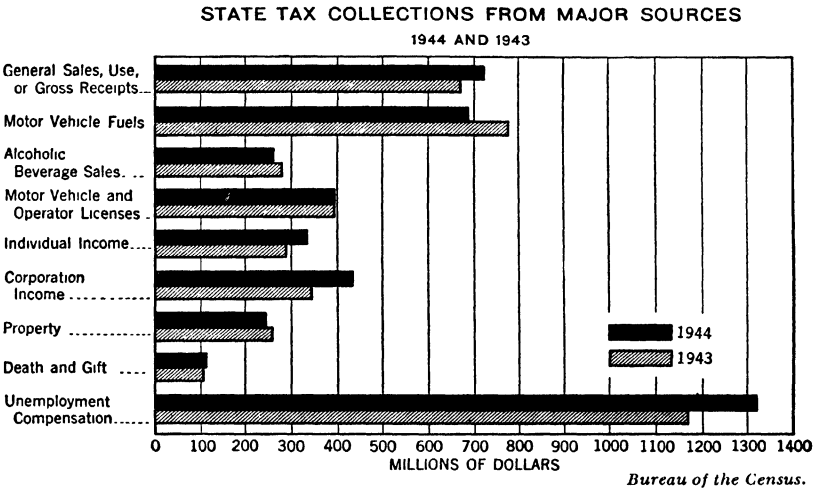
Difficulties in Connection with Personal Tangible Property It is relatively easy for even untrained persons to locate land and buildings, though they may place fantastic values on what they find, but personal property presents more serious difficulties. People are reluctant to report the ownership of personal tangible property because it usually does not bring in any income and seems to them quite different from land and buildings which have definite utility. The result is that populous states as far as the tax records can be depended upon to tell the story contain only a few hundred watches and possibly not even that many diamonds. It has been argued that the cost of assessing personal tangible property is so high in comparison with the amount of income produced in taxes that a state would do well to exempt personal effects below, say, $500 in value.[6]

Intangibles The problem of intangible personal property is even more perplexing than that of tangible personalty. The assessor is largely dependent upon the honesty of the owner to report his intangibles and the weight of an ordinary general property tax is so heavy on this type of property that honesty is severely strained. Many bonds and some stocks do not earn more than 2 or 3 per cent per year; yet the over-all tax rate in most localities is more than that. Shall the owner of intangibles be honest and incur taxes which will more than eat up all of his income from these securities or shall he forget to mention his holdings to the tax assessor? Obviously very few citizens will follow the former course and hence the amount of intangible personal property shown on tax lists is often shockingly low. Some states, recognizing the premium put upon dishonesty and appreciating the higher returns to be derived from a lower rate on intangibles, have taxed this type of property at a much lower rate than general property. Farmers sometimes resent this discrimination which they view as favoritism, but it has

[6] Some states do follow this practice.

been demonstrated again and again that a tax of 25 cents per $100 value in the case of stocks and bonds will actually produce many times as much revenue as the ordinary general property tax of say $2.50 or $3.00.

Income Taxes One of the earlier new sources of revenue discovered by the states was the tax imposed on the incomes of individuals and corporations. State after state has joined the procession, until some three fourths of the states now have corporation-income taxes and/or personal-income taxes. Income taxes as de-



Bureau of the Census.

fined by the United States Census Bureau are of the net type, permitting those affected to deduct the expenses of doing business and certain other specified items from their gross incomes before computing taxes. In addition to this traditional type of income tax, there is what is known as the "gross" income tax which is based upon all income. The net income tax has been the more popular and at present takes in something like 70 per cent of the entire population of the United States. Individuals have recently contributed approximately one half of a billion dollars annually in this form of tax, while corporations have paid in more than four hundred million dollars. Thus income taxes account for about 12 per cent of state tax collections, or about three times as much as the traditional general property tax. The gross income tax has been

both praised and criticized. It has two great advantages: (1) it is an excellent producer of revenue and (2) it is easy to collect because there are no loopholes which permit shrewd lawyers to save their clients large sums. Critics maintain that the gross income tax is not fair in that it falls particularly heavily on small business men and others who have little margin of profit. In both types of income tax it is common to make some exemption, ordinarily from $1,000 to $1,500.

Inheritance and Estate Taxes Every state except Nevada provides for a tax upon the estates of wealthy persons and upon sizable inheritances. The majority of the states graduate the amount of the tax, basing the rate upon the size of the estate. The nearness of relationship to the deceased has a good deal to do with the exemption and rate in the case of inheritances. These taxes have produced more than one hundred and fifty million dollars per year in the forty-seven states that collect them.

Sales Taxes The most profitable single category of state income is labeled "sales and gross receipts taxes" by the Bureau of the Census. These have recently brought in almost one third of all state revenues and if federal grants-in-aid and other non-taxes are excluded about 40 per cent. The most important sales tax levied by the states—and every state uses such a tax—is that on motor fuel, the greater part of which is derived from gasoline. In normal years the states have collected about one fifth of their tax receipts from motor fuel alone; more than $1,000,000,000 has been derived from this source in a single year. The original argument for this tax stressed the improvement of highways, but the rate has been increased through the years until very large amounts are now diverted for general governmental purposes. The desperate need for additional funds in the early 1930's led a number of the states to enact laws imposing general sales taxes; some of these included food while others attempted to exempt the necessities. Approximately half of the states now make use of the general sales-and-use tax, imposing taxes which run from 1 to 3 per cent. The total income from the general sales tax exceeds $1,000,000,000 per year, which represents about one seventh of total state receipts. Alcoholic-beverages taxes bring in more than $400,000,000 per year, while tobacco taxes produce more than $200,000,000 annually.

Other Taxes and Licenses Motor vehicle taxes are an im-

portant producer of state revenue, though far less productive than the tax on gasoline; more than $500,000,000 has been realized in one year from this source. Licenses on businesses of various kinds bring in more than $650,000,000. Unemployment compensation taxes on pay rolls account for some $1,000,000,000 per year—a handsome sum, but this does not go for running the ordinary services of a state government.

Federal Grants-in-Aid Prior to 1933 the amounts which states received from the federal government in grants-in-aid were comparatively small, but the years since that time have seen new projects added or increases made in existing projects—usually both—until this source is now a major one for every one of the forty-eight states. Altogether states receive something like one tenth of all their income from federal grants-in-aid, which total approximately $750,000,000 annually.[7]

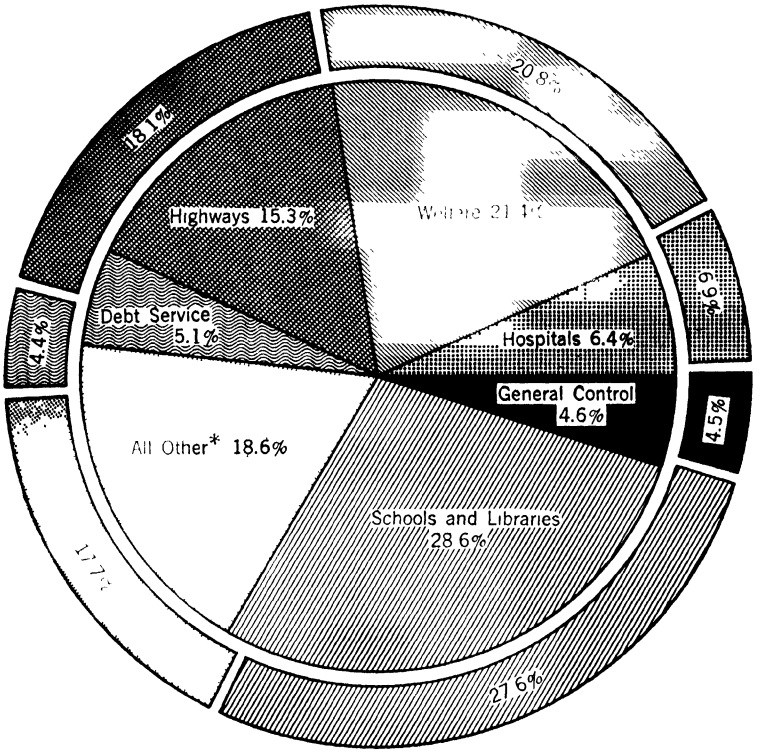
Miscellaneous In addition to the major sources of state revenue which have been mentioned there are many minor sources which may be resorted to only by one or two states. Approximately one hundred million dollars come in each year from these miscellaneous payments.

EXPENDITURES

The demands made upon the several state governments have long been heavy, but the problems brought on by the economic depression following 1929 added a substantial load which at times seemed almost too great to be borne. The social security program of the national government has involved large grants-in-aid to the states; yet it has also necessitated the local contribution of matching sums. Some of this burden has been passed on to the counties, cities, and towns, but the state treasury has had to bear a considerable part of the cost. Despite the success in searching out new sources of revenue which raised the per capita tax receipts from $17.27 in 1932 to $55.30 in 1946—a more than 100 per cent increase—some of the states have been beset by the problem of how to make ends meet. The total general expenditures of the forty-eight states now amount to well over $7,000,000,000 per year.

[7] For a breakdown of this amount by programs, see the annual reports of the Bureau of the Census entitled *State Finances*.

FUNCTIONAL DISTRIBUTION OF STATE BUDGETED EXPENDITURES FOR PROJECTED AND PREVIOUS BIENNIUMS



OUTER CIRCLE = 1946 AND 1947
INNER CIRCLE = 1944 AND 1945

(For a few States, 1945-1946 and 1943-1944)

*	For 1946-1947	For 1944-1945
Public Safety	3.8%	4.1%
Natural Resources	3.3	3.1
Correction	2.1	2.0
Health	1.7	1.5
Miscellaneous	6 8	7.9

Bureau of the Census.

Budgetary Systems All of the states at present operate under nominal budget systems, although there is wide variation in the effectiveness of the different setups. Some of the states have paid a great deal of attention to their budgetary practices, setting up special departments of the state government to give their full-time attention to the preparation and carrying out of budget provisions and bringing in outside experts to advise as to the most modern procedures. At the other extreme are some states which do little more than go through the forms of budget-making. The general outlines of state budgetary systems follow those which have already been examined in the national government,[8] but there are certain differences which should be noted. In the first place, there is not the great gap between expenditures and income that has so often characterized the federal system.

Budget-making in the States A second distinction which possesses greater validity involves the agency entrusted with the preparation of a budget. In the national government a Bureau of the Budget which is a part of the executive office of the President performs that service, whereas in the states there is no uniform arrangement. Arkansas clings to the custom of entrusting the preparation of a budget to the budget committee of the legislature; nine of the states [9] maintain commissions of one kind or another, which usually draw their membership both from the administrative departments and the legislature; four states make the governor directly responsible for preparing a budget,[10] while three states name the comptroller as the budget officer.[11] In the remainder of the states there are budget directors, budget bureaus, budget commissioners, and other special provisions made for this financial planning and these are subject to the supervision of the governor in most instances. Hence it may be seen that the legislative budget has almost disappeared from the scene, that the commission type is still fairly common, but that the distinct trend is in the direction of the executive type of budget.

Details of Budgetary Practice The procedure which was outlined in connection with the drafting and execution of a national

[8] See Chap. 23.

[9] Connecticut, Delaware, Florida, Indiana, Louisiana, Montana, North Dakota, South Carolina, Texas.

[10] Arizona, Nevada, New Mexico, Wyoming.

[11] Alabama, Iowa, New Hampshire.

budget [12] is followed by the states in general and does not require repetition here. However, there are several details that may be mentioned as especially related to the states. Instead of presenting the budget to the legislative body within a few days of its convening, a number of states permit twenty days or even longer after the session begins. Perhaps the most significant difference between the national budgetary procedure and that of the states is to be found in Maryland, Nevada, New York, and West Virginia, where the legislature may strike out or reduce any item in the proposed budget, but does not have the authority to insert new items or to increase other amounts. This, together with the itemic veto which the governors usually have over financial measures, permits a central control of finance which the federal system does not render possible.

A Breakdown of State Expenditures Out of the total of approximately $7,500,000,000 which the forty-eight states now expend annually, two and a half billion, or about one third, goes for operating the various departments and agencies of the state government. When viewed from the standpoint of the individual, this represents approximately $20 per capita which must be raised every year. In addition to the operation of state government, there are four other items which require substantial sums of money: capital outlays, debt service, aid paid to other governments, and contributions to trust funds and to state government enterprises. The states have certain expenses which must be met year after year and these are known as "operating costs"; there are other expenses which are not recurring and which involve the purchase of land, the construction of permanent buildings, and the improving of highways. These are designated expenditures for capital outlays. As much as $750,000,000 has recently been put into this type of program in a single year. Debt service speaks for itself and represents, of course, the amounts which are required to meet the interest and repayment charges on the state debt. Something like $250,000,000 has to be paid out each year on this account. Aid given to local governments amounts to some $2,000,000,000, while various trust funds and special state enterprises receive approximately $1,250,000,000 each year.

Expenditures for Specific Purposes The fact that the func-

[12] See Chap. 23.

tionalized general expenditure of the states accounts for some five billion dollars per year is more or less meaningless because it gives no indication of the specific purposes for which the money goes. To begin with, one perhaps thinks of the legislature, the governor's office, and the elaborate system of courts; these are much in the limelight and perform important functions, but they are not responsible for any large portion of the five billion dollars which we are engaged in tearing apart. Even if there is added to these branches the general administrative departments, such as the secretary of state's office, the auditor's office, and the attorney-general's department, the aggregate cost runs only to about $200,000,000 per year, or less than 5 per cent of the total.

Education For many years the largest item among the costs has been that labeled "schools." This requires more than one billion dollars annually, or approximately one fourth of the grand total. This includes the expenses of operating state universities, teacher-training institutions, state departments of education, and other varieties of educational activity directly undertaken by the states and also the sizable grants that are made to assist the local school authorities in meeting the costs of the elementary- and secondary-school systems.

Public Welfare Another billion dollars, or substantially one fifth of all functional costs, is paid out every year for various public welfare purposes, the most important being old-age assistance, pensions for the blind, aid to dependent and crippled children, and grants to those unable to purchase food, clothing, and shelter. Much of this work is carried on directly by the states or at least financed in large part by the states, while a great deal is entrusted to the local governments which then receive financial assistance.

Highways Another large item of expenditure involves the construction and maintenance of highways; more than $900,000,000 per year goes for this purpose. States construct and maintain many miles of highways themselves and in addition distribute large sums among the counties, cities, and towns to assist them in improving and caring for the roads and streets for which they are expected to assume responsibility.

Hospitals and Institutions for the Handicapped Next in order of importance among the operating costs of state government

is that category which takes in the hospitals and asylums for the insane, the epileptic, the feeble-minded, and other handicapped classes. The number of these cases has increased sharply during recent years, thus placing a heavy financial load upon the states which have to shoulder most of the burden. Approximately $325,000,000, or 6 per cent of the aggregate, is devoted to this purpose annually.

Protection to Persons and Property and Corrections Although states have long maintained penitentiaries and other correctional institutions, they have only recently entered the field of protecting persons and property on a large scale, for this function was traditionally performed by the county and city police and fire departments. Organized crime has made the local officials more or less helpless and called for state police forces; the network of improved highways has brought about traffic problems which require central policing. Approximately $150,000,000 is being spent annually by states for protecting persons and property, while the penitentiaries, reformatories, state farms, and training schools for delinquent youth require an additional sum more than half as large.

Development and Conservation of Natural Resources Despite years of neglect, the states have at last become reasonably conscious of the importance of conserving their natural resources. State forests are being developed; wildlife is being protected; coal, oil, and other resources are being examined with a view to conserving what remains. Approximately $165,000,000 is currently being expended by the states for this type of activity.

Health and Sanitation Another major interest of the several states involves the health of the inhabitants which in turn necessitates attention to proper sanitation. At present the states are spending more than $100,000,000 each year on their own health projects and distributing about $30,000,000 to assist the local governments to meet the demands made on them.

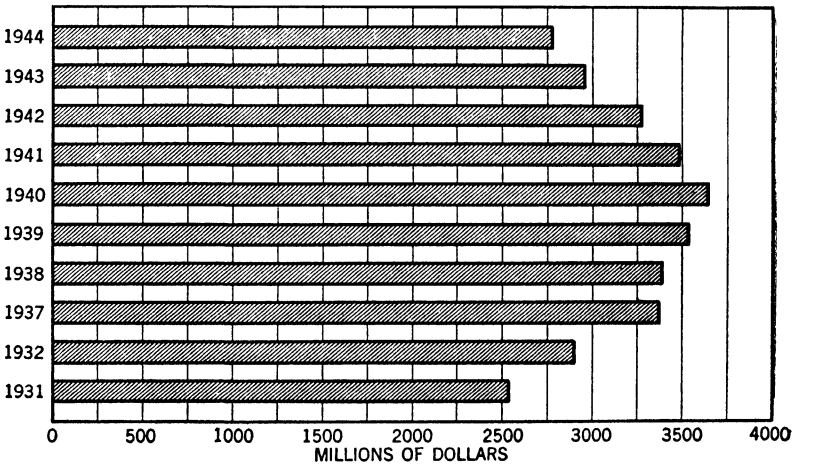
Other Items In addition to the activities noted in the preceding paragraphs, there are numerous minor items which occasion the expenditure of state funds. Recreation receives more than $10,000,000 per year; state libraries draw almost $3,500,000 annually. A multitude of activities are put in an omnibus class entitled "miscellaneous," which in a single year occasions the expenditure of

more than $125,000,000 by the states themselves as well as a distribution of more than $40,000,000 among their various subdivisions.

INDEBTEDNESS

During the course of the years the states have incurred indebtedness for improving their highways, constructing public buildings, providing for current deficits, and numerous other purposes. Debt totals have risen, but nothing like so sharply as in the case

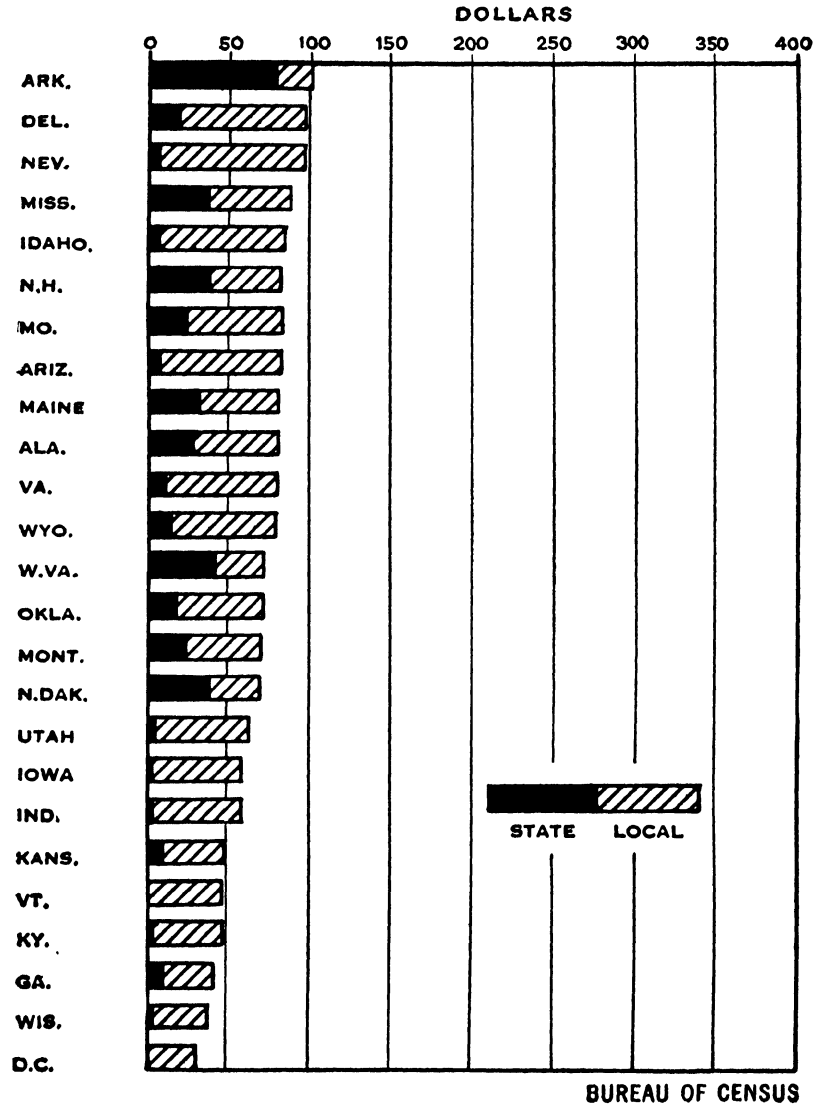
STATE GROSS DEBT OUTSTANDING: SELECTED YEARS, 1931-1944



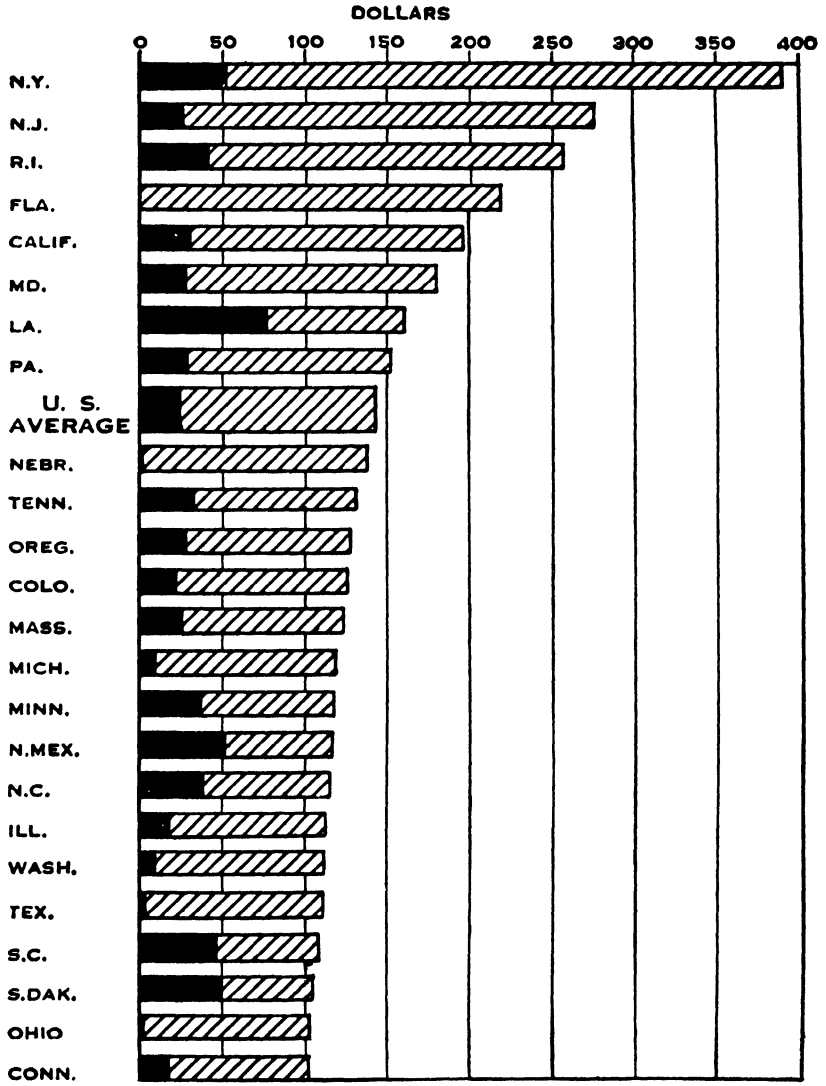
Bureau of the Census.

of the national indebtedness—for example, the per capita net debt of all the states amounted to $5.48 in 1880, $2.78 in 1910, $8.64 in 1932, $16.35 in 1930, $16.37 in 1932, $18.90 in 1937, $19.28 in 1939, and $13.26 in 1946. The total gross debt of the forty-eight states exceeds $2,350,000,000, but if there is subtracted from this the amounts which have been accumulated in sinking funds and other assets for the purpose of paying off the debt, a total net long-term debt of slightly less than two billion dollars results.

Diverse Record among the States The debt totals noted here give a general picture of the situation, but they are not too enlightening so far as any one state is concerned because of the



PER CAPITA GROSS DEBT OF STATE AND LOCAL GOVERNMENTS: 1942


DOLLARS
0
50
100
150
200
250
300
350
400
N.Y.
N.J.
R.I.
FLA.
CALIF.
MD.
LA.
PA.
U. S. AVERAGE
NEBR.
TENN.
OREG.
COLO.
MASS.
MICH.
MINN.
N.MEX.
N.C.
ILL.
WASH.
TEX.
S.C.
S.DAK.
OHIO
CONN.

strikingly diverse record among the various states.[13] New York owes more than $400,000,000, or approximately one fifth of the amount admitted by all of the states together, while Florida, Indiana, Iowa, Nebraska, Nevada, Oklahoma, Georgia, and Wisconsin have no net general government, central organization indebtedness at all. Illinois is indebted to the extent of some $105,000,000; Arkansas owes approximately $129,000,000; Louisiana is in debt to the extent of more than $150,000,000. At the other extreme are: Delaware, Idaho, North Dakota, Oklahoma, Vermont, and Wyoming which have debts in each case of less than $5,000,000. In certain cases state debts are made very difficult by state constitutions[14] and this doubtless accounts to some extent for the current situation; yet there are states that do not take advantage of the leeway which is permitted to them, preferring to finance their construction of roads and public buildings on a pay-as-you-go basis.

Sinking Fund Borrowing The common method of borrowing money was long that of issuing bonds which had a life of from ten to forty or more years. All of the bonds in a single issue fell due at one time and were retired by the use of sinking funds which the states built up during the years that the bonds were outstanding. Under this system annual contributions were supposed to be made to the sinking fund and in such amounts as would enable the state to pay off all of the bonds when they fell due. The trouble with sinking funds is that it is easy to delay adequate contributions during lean years; moreover, sinking funds have to be invested and the investments may prove worthless or the officials who handle the funds may turn out to be dishonest and embezzle sums entrusted to their care. The experience of the states with this type of borrowing has led some of them to substitute a newer type of bond.

Serial and Annuity Bonds Serial and annuity bonds are based on the principle that funds available for reducing the debt should be used at once for that purpose rather than held until an entire issue of bonds comes due. In other words, instead of having

[13] A table showing the gross and net debts of all the states will be found in the current *Book of the States.*

[14] See C. C. Rohlfing and E. W. Carter, "Constitutional Limitations on State Indebtedness," *Annals of the American Academy of Political and Social Science,* Vol. CLXXI, pp. 132-133, September, 1935; and the *Book of the States, 1945-1946, op. cit.*

all of the bonds mature at one time, this type of borrowing practice scatters them out, so that some are payable every year until the entire amount is paid off. Various forms of these bonds provide that the date of maturity is specified on the face of the bond, that the maturity date is left uncertain when the bonds are issued with numbers drawn by lot every year to determine which bonds shall be paid, that a smaller number of bonds are paid off each year during the earlier years when interest charges are higher. It is not difficult to perceive that serial and annuity bonds avoid most of the weaknesses that have been pointed out in connection with sinking fund bonds.

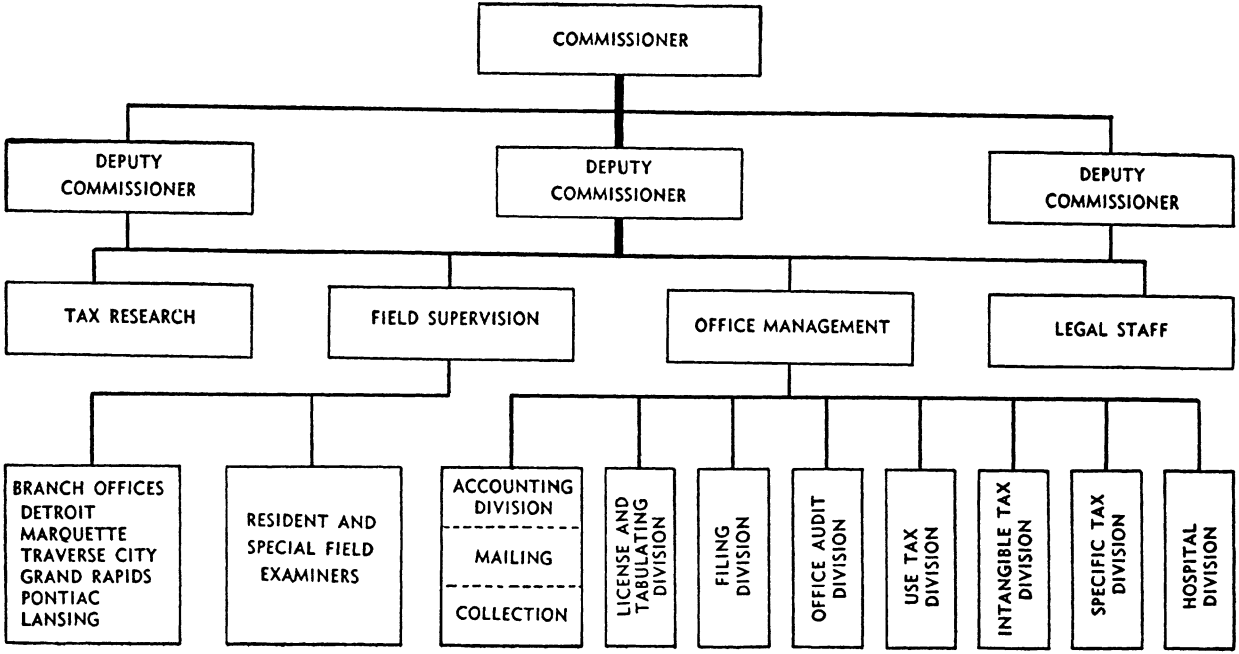
THE CARE OF STATE FUNDS

When state governments were relatively modest in their collections and expenditures, the problem of caring for public funds was not a very serious one. Nor was it necessary to take elaborate precautions lest large amounts of money be paid out to persons and companies not entitled to receive compensation from the state. But as states have added tax to tax and engaged themselves to pay out many millions of dollars every year for personal services and supplies, it has been increasingly essential that they have up-to-date accounting and auditing systems. Some of the states have paid a great deal of attention to these matters, abandoning outworn methods of bookkeeping for modern ones, installing accounting machines to do the work once performed laboriously by numerous clerks, and otherwise seeking to keep their finances in such an orderly condition that it would be apparent at any time exactly what debts were outstanding and what balances were available. Other states have been less alert in this particular, with the result that losses have occurred, records have been months behind, and no one could tell at a given moment what the exact condition of the treasury was.

The Collection of State Funds State revenue now comes from a hundred different sources; consequently the problems incident to collection have multiplied many times. To begin with, the treasurer has to collect taxes directly from large numbers of corporate and individual payers. Moreover, inasmuch as different moneys may have to be kept separate and devoted to specific purposes, for example public education and the payment for buildings,

MICHIGAN DEPARTMENT OF REVENUE

ORGANIZATION CHART



Michigan Department of Revenue.

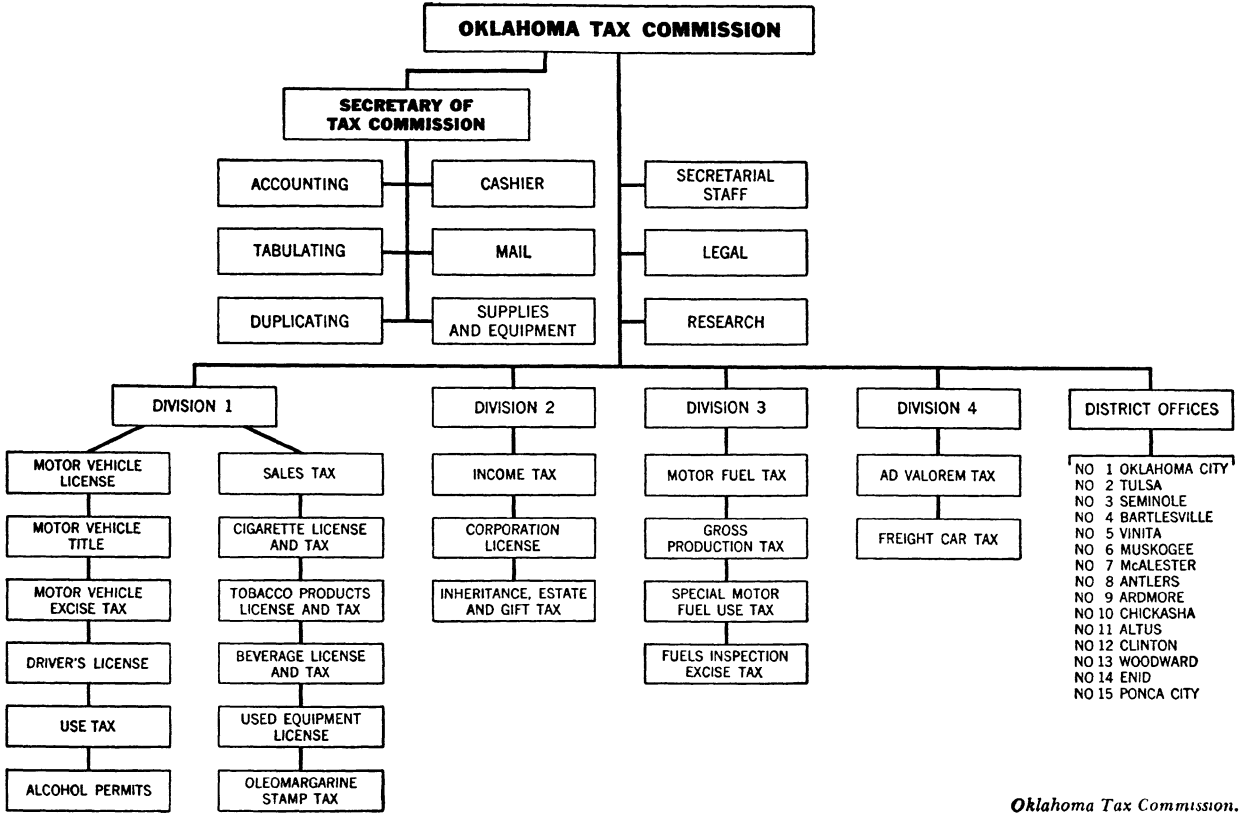
he has to set his accounting system upon the basis of a number of special funds. To add to the complications, various statutes authorize other state agencies to collect automobile-license taxes, gross income taxes, liquor-license fees, and a good many other taxes or fees due the state. The treasurer may have to collect from these other state departments, check their accounts, and extend his own accounting setup to cover their receipts.

Custody of State Funds After the money has been received, there is the problem of keeping it securely until it has to be paid out.[15] Few states have the facilities to keep large sums of money in their own vaults and consequently the practice has been to deposit the funds in banks. However, not all banks have been sound and therefore it has been necessary to decide which banks should receive public deposits and what security should be required to guarantee the safety of these funds. Not a great many years ago public treasurers gave state funds to their political favorites among the bankers, even though the attending risk might be serious. Public opinion finally became sufficiently aroused to cause statutes to be enacted which required banks to pay interest on public funds and to put up securities that would protect the state against loss. Recently the situation has been further complicated by the glut of bank deposits and the federal legislation prohibiting members of the Federal Reserve System from paying interest on demand deposits.

Auditing Although the treasurer collects and cares for state funds, he does not have the authority to pay out money unless he is instructed to do so by the state auditor. Originally it was not thought necessary to check treasurers, but experience, of a bitter variety, demonstrated the desirability of having a separate state officer who would receive all claims against the state and certify those for payment which seemed to be well founded. Most of the states now have separate comptrollers or auditors who are elected by the voters or appointed by the governor.

The Preaudit There are two general types of audit which a responsible state will make provision for. First, there is the audit just noted which is preliminary to any payment of funds belonging to the state by the state treasurer. This consists of examining

[15] On this subject, see M. L. Faust, *The Security of Public Deposits*, Public Administration Clearing House, Chicago, 1936.



Oklahoma Tax Commission.

the claim to ascertain whether it has been incurred under some appropriation made by the legislature, since in the last analysis no money can be expended by a state until the legislature has made a current appropriation or passed a general law ordering certain payments periodically. At this stage the auditing authorities are also supposed to satisfy themselves that the personal service, supplies, or other items specified in the bill have actually been rendered or received by the state. It may be noted that in reality it is literally impossible for an accurate check to be made of all the bills which are pouring in on a present-day auditor. Hence the auditor is obliged to depend upon the certification which he receives from the head of the institution or department which incurs the obligation, though he may occasionally send around an investigator without notice to take samples.

Postaudit Quite as important as the preaudit is a subsequent step which is known as the "postaudit." At intervals of a few months or a year it is highly desirable that the auditing department examine the financial records of the various departments of the state which receive and spend money for the purpose of seeing that everything is in proper order. In this way irregularities may be uncovered which if left unattended would cost the state thousands of dollars either because of someone's carelessness or downright dishonesty.

STATE CONTROL OF LOCAL FINANCES

States are naturally interested in the financial practices of their political subdivisions, since in many cases their own obligations depend upon what goes on in the local governments. If a school district cannot pay the bonded indebtedness which it has extravagantly incurred, it is possible that it will not have the funds to pay ordinary operating expenses and hence will have to close the schools. This gives the state concern because educational standards are being threatened; besides no state likes to have the reputation of having subdivisions which default on their bonds. A scoundrel in the office of city treasurer may embezzle public funds to the extent of thousands of dollars unless some check is made and this too may cause loss to the state because some of the money involved belonged to the state share of general property-tax collections. Recognizing this problem, several states, including Indiana, North Carolina, Iowa, and

Oklahoma, have seen fit to enact legislation which gives the state authorities a considerable measure of control over local finances.[16]

Auditing of Local Government Finances One form of centralized control of local finances takes the form of periodic auditing. Agents of the auditor, state board of accounts, or whatever state department is made responsible visit every official of counties, cities, townships, and other subdivisions who collects or disburses public funds. These inspections are required at least once each year in most cases and are not supposed to be announced beforehand. If irregularities are discovered, restitution must be made by the officer involved if it is a matter of carelessness, but if embezzlement has taken place criminal charges are usually preferred. It is often the practice to require all local financial officers to install uniform systems of records and accounting.

Review of the Tax Rate A somewhat more drastic type of central control provides that local budgets and their accompanying tax rates shall be subject to central review. A small number of interested citizens may petition the state board of tax commissioners to review a specific item in a proposed budget which they regard as extravagant and unwarranted. If a maximum tax rate is stipulated by state law except in so far as emergencies require additional appropriations, the state authorities may be instructed by law to review all cases where the maximum rate is exceeded. Deficiency appropriations not anticipated by the budget may also have to be submitted by the local authorities to the state department; transfers from one fund to another may also involve similar action.

Review of Proposals to Issue Bonds Finally, central control of local finances sometimes extends to a review of proposals to issue bonds. Even if a local government has not incurred indebtedness to the extent permitted by law and even if the project involved is one authorized by law, state review may be invoked by interested citizens on the ground that such borrowing is unnecessary, constitutes an extravagance, or is untimely.

[16] For a discussion of the experience of specific states, see C. B. Masslich, "North Carolina's New Plan for Controlling Local Fiscal Affairs," *National Municipal Review*, Vol. XX, pp. 326ff., June, 1931; Carl Dortch, "The Indiana Plan in Action," *ibid.*, Vol. XXVIII, pp. 525ff., November, 1938; and Edwin E Warner, "A Study of the Indiana Plan of Budgetary Review," *Legal Notes on Local Government*, Vol. IV, pp. 279ff., March, 1939.

Selected Bibliography

Ames, K. L., *The A–B–C of Illinois State Finance*, Illinois Department of Finance, Springfield, 1936.

Assessment Principles, National Association of Assessing Officers, Chicago, 1939.

Blatchford, B. U., *American State Debts*. Duke University Press, Durham, 1941.

Buck, A. E., *Public Budgeting; a Discussion of Budgetary Practice in the National, State, and Local Governments of the United States*, Harper & Brothers, New York, 1929.

—, and others, *Wartime Problems of State and Local Finance*, Tax Institute, Philadelphia, 1943.

Buehler, E. C., comp., *State and Local Taxation*, The H. W. Wilson Company, New York, 1932.

Haig, R. M., and others, *The Sales Tax in the American States*, Columbia University Press, New York, 1934.

Hansen, A. H., and H. S. Perloff, *State and Local Finance in the National Economy*, W. W. Norton & Company, New York, 1944.

Hutchinson, R. G., *State-Administered Locally-Shared Taxes*, Columbia University Press, New York, 1934.

Kilpatrick, Wylie, *State Supervision of Local Budgeting*, National Municipal League, New York, 1939.

—, *State Supervision of Local Finance*, Public Administration Service, Chicago, 1941.

Leland, S. E., ed., *State-Local Fiscal Relations in Illinois*, University of Chicago Press, Chicago, 1941.

Martin, James W., *Southern State and Local Finance Trends and the War*, Vanderbilt University Press and University of Kentucky Press (jointly), Nashville, 1945.

Nicholas, E. R., and others, *The State Sales Tax*, The H. W. Wilson Company, New York, 1938.

Reber, H. J., and E. O. Griffenhagen, *The Taxation System of Missouri*, report to the governor of Missouri, 1929.

Rohr, C. J., and others, *The Problem of Taxation in Massachusetts*, Massachusetts State College, Amherst, 1939.

Schmidt, E. B., *Tax Systems in Nebraska*, University of Nebraska Press, Lincoln, 1940.

Stockwell, M. M., *Studies in California State Taxation, 1910-1935*, University of California Press, Berkeley, 1939.

Tannery, F. F., *State Accounting Procedure*, Public Administration Service, Chicago, 1943.

University of Alabama, *National Defense and State Finance*, Bureau of Public Administration, University, 1941.

36 · *Territories and the District of Columbia*

It is probable that comparatively few Americans are interested in an empire for the United States or indeed in colonies at all. It is true that a few crackpots sometimes declare publicly that the United States might be well advised to annex Canada, Mexico, and indeed extensive portions of South America, but they arouse more resentment and ridicule than support among the rank and file of the people. Yet strangely enough the United States has the reputation in certain quarters abroad of being grasping and avaricious, even to the point of seizing the possessions of neighboring countries. In many of the Latin-American countries the reputation of the United States in this respect has been and still is to a considerable extent quite lurid; we are the "colossus of the North," a gigantic ogre.

Our Past Record It is constantly remembered in the Latin-American countries that generous portions of our present continental territory were taken by force from Mexico. The land included in the states of California, Arizona, New Mexico, and Texas was once either entirely or largely owned by Mexico and the United States with little provocation seized it. Puerto Rico was more recently separated from Spain after the ultimatum laid down by the United States had been accepted by Spain. The Panama Canal Zone was handled from behind the scenes rather than in public, but there is a wide-spread feeling in the Latin-American countries that it represents another case of our taking what we want, irrespective of the justice or niceties involved. Perhaps even more significant has been our intervention in and economic exploitation of certain Central American countries. Armed forces have been sent to these countries when we have not liked what went on there; at times these military forces have been maintained in a

single country for several years, though disorder had apparently ceased to threaten. If the United States has not liked a certain head of state in Latin America, she has not hesitated in the past to refuse recognition, which in most cases has been tantamount to the eventual downfall of that regime. The policy during the last decade has been different; but the memories of the past remain vivid.

Future Interests It is, of course, impossible to predict what the attitude of the United States toward colonial possessions may be in the future. Experiences since 1940 have convinced many people that the United States made a major mistake in permitting Japan to take territory in the Pacific following World War I. Both our national defense and airline plans naturally make us very interested in key islands, especially in the Pacific. At the same time our relative economic self-sufficiency does not support a claim for foreign territory. It may be that the system of international trusteeship provided in the San Francisco Charter will solve the problem.

Present Status of Our Territories For approximately three decades the continental United States has been completely covered by states, except for the small area included in the District of Columbia. Hence the territorial possessions of the United States are now separated from the homeland either by extensive bodies of water or great areas of land. Hawaii, Puerto Rico, the Virgin Islands, and the Pacific islands are insular in character, while Alaska and the Panama Canal Zone, though parts of the American continents, are separated from the United States by hundreds of miles of territory belonging to other countries.

Types of Territories It has been held by the Supreme Court that the Constitution does not automatically follow the flag [1] and that Congress has large discretion under the provision in the Constitution which reads: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." [2] From this there has been developed the classification of territories into two types: unincorporated and incorporated.

Unincorporated Territories Unless Congress ordains by law

[1] See *Balzac* v. *People of Porto Rico*, 258 U. S. 298 (1922).
[2] Art. IV, sec. 3.

or a treaty provides otherwise, a territory is regarded as belonging to the unincorporated class. This means that Congress may set up any form of government that it pleases if reasonable attention is paid to the general principles underlying the Constitution. The inhabitants are not citizens of the United States; nor are they entitled to the constitutional rights of jury trial, grand jury indictment, and related personal freedom. The territory is not part of the United States technically and hence import duties may be levied upon goods sent from the territory to the United States, much as in the case of foreign products.[3] The various Pacific islands other than Hawaii, the Panama Canal Zone, and the Virgin Islands fall into the unincorporated class.

Incorporated Territories An incorporated territory, on the other hand, is part of the United States; its inhabitants are citizens of the United States, and the Constitution as far as it is applicable applies to it. Alaska and Hawaii are incorporated territories in every sense, while Puerto Rico has many of the characteristics of this type of territory. In this last case Congress has provided that citizenship shall be enjoyed and the principal provisions of the Constitution shall apply and this might seem by implication to bring about incorporation,[4] although no formal steps in that direction have been taken.

The Question of Future Statehood for the Territories Hawaii has been engaged in an endeavor to acquire statehood for several years and in 1940 was authorized by Congress to submit the question of whether such a status was desired to its voters, with the result that a majority showed themselves definitely favorable. The leaders in the Hawaiian movement point to the fact that their islands have a larger population than several of the states and that they contribute larger sums in the form of taxes to the national Treasury than a half a dozen or so of the states. They argue that large numbers of substantial citizens of American origin now reside in the islands, that the educational standards are high, and that the strategic importance of the islands is admittedly very great. Both President Truman and the House of Representatives favored

[3] See *Downes* v. *Bidwell*, 182 U. S. 244 (1901).

[4] However, the Supreme Court declared in *Balzac* v. *People of Porto Rico*, 258 U. S. 298: "On the whole, therefore, we find no features in the Organic Act of Porto Rico of 1917 from which we can infer the purpose of Congress to incorporate Porto Rico into the United States."

Hawaiian statehood in 1948. Alaska has been less active in promoting its own claims to statehood. Its population has the advantage of being similar to that of the continental United States, but its sparseness is a considerable barrier. Puerto Rico has been promised statehood by Congress at some future time if all goes well; yet there is some question whether the majority of the Puerto Ricans desire this status rather than their complete independence.[5]

Central Administration of Territories Until quite recently no uniform provision has been made for the central administration of the several territories. The War Department had general oversight in the case of the Philippines and the Panama Canal Zone; the Navy assumed responsibility for Samoa, Guam, and other tiny insular possessions; while the Interior Department had charge of what was not otherwise taken care of. For a number of years there has been a growing opinion that it was hardly satisfactory from the standpoint of the United States and certainly not fair to the territories to have such a haphazard system of administration. In the cases of those territories under the War and Navy departments there was some evidence that the primary consideration was that of national defense rather than the welfare of the territories themselves. At any rate the emphasis has been shifted to some extent to civil problems and the reorganization effected during the 1930's transferred all but a few of the very small possessions to a Division of Territories and Island Possessions in the Department of the Interior.

HAWAII

Organic Act The territory of Hawaii is governed under an organic act which was passed by Congress in 1900 and which has, of course, been amended from time to time.[6] This act serves Hawaii very much as a constitution does a state, though it is somewhat more positive in character than most of the state constitutions. It stipulates universal adult suffrage for those able to speak, read, and write English or Hawaiian, authorizes the election of a single dele-

[5] There is a strong nationalist party in Puerto Rico. During recent years the activities of this group have led to disorder and even in a few cases murder.

[6] This act and other aspects of the territorial government are discussed in W. H. George and P. S. Bachman, *The Government of Hawaii, Federal, Territorial, and County,* University of Hawaii Press, Honolulu, 1934.

gate to the House of Representatives in Washington, and provides for the structure and functions of the territorial government.

Legislative Branch The organic act sets up two elective chambers, a senate and a house of representatives, as the legislative branch of the government, conferring on these bodies the authority to make laws, levy taxes, and vote expenditures of public funds. Acts of the legislature are subject to the veto of the governor, but a veto may be overridden by a two-thirds vote of both houses. Although somewhat smaller in size than some of the state legislatures, the Hawaiian legislature is much like them in both organization and powers. One difference may be noted in the authority granted. If a legislature does not pass appropriation bills for the running of the government, the governor is required to call a special session and until it has made some provision the territorial treasurer with the advice of the governor is authorized to pay out public funds on the basis of appropriations made the preceding year. This provision does not necessarily obviate deadlocks between the governor and the legislature, but it does make it possible for the government to operate without undue strain and furthermore reduces the control which the legislative branch has over the executive.

Executive and Administrative Officials The chief executive of the territory of Hawaii is known as "governor." His general duties resemble those of a state governor, but he receives his position at the hands of the President of the United States rather than by popular election. There is a secretary, a treasurer, an attorney general, a commissioner of education, a department of public welfare, and the conventional agencies ordinarily found in a state. The chief administrative officers are appointed by the governor with the consent of the territorial senate.

Courts Hawaii has a system of territorial courts organized in three grades and headed by a territorial supreme court. There is also a federal district court, with headquarters in Honolulu.

ALASKA

Alaska, having been acquired in the 1860's, claims a position as the oldest of the territories. Despite its vast area and varied contour, its salmon fisheries and mines, and its reasonably mild climate

along the coasts of the southern portion, it remains sparsely populated. Attempts have been made to settle it with subsistence homesteaders from the United States, but for one reason or another many of the original colonists have not remained. Proposals have been made to open it to European refugees as a haven, since it has no lack of resources and needs additional population.

Form of Government Alaska is governed under an organic act passed by Congress, though the American citizenship of its inhabitants is stipulated in the treaty with Russia under which it was acquired. It has a governor appointed by the President of the United States who is assisted by a secretary, a treasurer, an attorney general, an educational commissioner, and other administrative officials. A bicameral legislature, whose members are elected by the voters, is empowered to make local laws which provide for the maintenance of law and order, raise money, and appropriate public funds. Its acts are subject to veto by the governor, though the veto may be overridden by a two-thirds vote; Congress may also disallow acts which it passes. A complete system of courts organized in the traditional pattern heads up in a territorial supreme court. The voters choose a single delegate to sit in the House of Representatives in Washington; he may speak on business which is of interest to Alaska, but he has no vote.[7]

PUERTO RICO

In contrast to Hawaii and Alaska, Puerto Rico is not well known to the average citizen of the United States. He has a vague idea as to its exact geographical location, knows very little about its cultural traditions and people, and fails to appreciate its problems. Puerto Rico came to the United States as a result of the Spanish-American War and for a number of years occupied a somewhat uncertain status because the United States scarcely knew what disposition to make of it. The Foraker Act of 1900 made some provision for its government, but it was not until 1917 that Congress got around to passing an organic act which applied especially to the island. The very uncertainty of the situation has doubtless contributed to the sad plight of the territory which a few years

[7] For additional discussion of the government of Alaska, see G. W. Spicer, *The Constitutional Status and Government of Alaska*, The Johns Hopkins Press, Baltimore, 1927.

ago was characterized by a former President after a visit as a gigantic poorhouse. The population is larger than the island can comfortably support; the resources of the island are less ample than they might be; and the people have been more or less neglected by the politicians who until recently were sent there as governors as a reward for loyal political service in the United States. The fact that the language is Spanish, that the cultural background is Latin, and that the legal institutions are founded on Roman rather than the common law, all serve to complicate the situation. A large section of the population has never reconciled itself to American rule and looks forward to a time when Puerto Rico will have independent status, much as Haiti and Santo Domingo enjoy at present. During the last few years governors interested in Puerto Rican problems have more frequently been appointed. In 1944 the President promised the Puerto Ricans that they would be permitted to elect their own governor as soon as feasible; consequently an investigating commission spent some time in the island attempting to discover what could be done to improve matters.

Status of Puerto Rico For some two years after it was taken over from Spain, Puerto Rico was administered directly by the army of occupation. Then the Foraker Act was enacted by Congress to provide for civil government, but it left the island an unincorporated territory. This system was not too satisfactory and in 1917 Congress agreed to ameliorate conditions to some extent by giving American citizenship to the inhabitants and by extending most of the constitutional guarantees, except that of a trial by jury, to the territory. At the same time a pledge of eventual statehood was made. Puerto Rico, therefore, presents a problem of status at the present time. She has never been formally incorporated into the United States; yet her people are citizens and except for the provision noted the Constitution applies to them.

Legislative Branch Puerto Rico has a bicameral legislature which is approximately the size of those of Nevada and Delaware. The members are elected by those of the adult citizens who can pass a literacy test, but the system is not quite the same as in an American state. In both the senate and the house of representatives the majority of members are chosen on the basis of single-member districts; however, in both houses several of the members are elected to represent all of the people of the island. The powers of the

legislature are reasonably broad as far as local problems go, with the usual right to levy taxes and make appropriations. If the legislature does not decide on appropriations before final adjournment, expenditures on the basis of the preceding year are definitely authorized by law. The governor may veto acts of the legislature and the legislature may override these vetoes by passing the bills again by a two-thirds vote. But the matter does not rest here as it does in a state or even in Hawaii, since all bills which are passed over the veto of the governor go to Washington for final decision by the President. Puerto Ricans claim that the President almost always sustains the veto of the governor and therefore nullifies any power which the legislature theoretically has to pass the barrier of a veto. Congress may also disallow an act of the Puerto Rican legislature, though this is rarely done.

Other Officers of Government The President has appointed a governor of the island with the consent of the Senate until very recently and it may be added that for one reason or another the turnover in this office has been quite rapid. In 1947 Congress enacted legislation providing that the Puerto Ricans be permitted to elect their governor. The President also appoints an attorney general and a commissioner of education, while the governor personally chooses the heads of the other administrative departments dealing with health, finance, agriculture, labor, and interior. The heads of the departments act not only in an administrative capacity, but collectively serve as an advisory council to the governor. A system of territorial courts culminates in a supreme court, whose five justices receive appointment at the hands of the President. There is also a federal district court to handle cases which come under the jurisdiction of the federal judiciary. The voters of the island elect a resident commissioner who has a seat but no vote in the House of Representatives at Washington.

OTHER TERRITORIES

The remaining territories of the United States are comparatively minor in character as far as area and population are concerned, although they may have great strategic significance from a military standpoint. The Virgin Islands were acquired from Denmark in 1917, largely because of their position relative to the Panama Canal. They are now permitted to elect two regional

councils, have a governor appointed by the President, and maintain a rather simple system of courts. The Panama Canal Zone has a governor appointed by the President, but it is not regarded as of such a character as to require a legislative body, though it does have courts.[8] Some of the tiny islands in the Pacific were long ignored by the powers because of their apparent lack of value; several countries had occupied them at various times and consequently laid claim to them. When a transpacific flying service was contemplated, these islands at once became of considerable importance as landing places and were quietly occupied by the United States despite some reservations made by Australia and Great Britain. Having few if any inhabitants, civil government is not a problem and they are administered directly by the Navy. Samoa and some of the islands taken from Japan are more populous, but no permanent provision has been made for their civil government, though discussions are under way.

THE PHILIPPINE COMMONWEALTH

At the end of the Spanish-American War the United States found herself in possession of the several thousand islands constituting the Philippine archipelago. These were separated from the Western Hemisphere by several thousand miles of water and were inhabited by several million persons of widely different language, racial stock, religion, cultural background, and stage of civilization, almost none of whom had a great deal in common with the people of the United States. To those who were infected with the germ of empire the occupation of the Philippines seemed a tremendous event in the history of the United States, since it extended our possessions half way around the earth. However, to those who conceived of a state as made up of people of common language, related cultural traditions, and living in proximity to one another, this was one of the most foolish steps imaginable.

Territorial Tribulations The experience of more than thirty years bore out the contention of the latter group rather than the hopes of the imperialists. The problems of bringing law and order to a polyglot population ranging from the uncivilized headhunters

[8] On certain aspects of the administration of the Zone, see M. E. Dimock, *Government-Operated Enterprises in the Panama Canal Zone*, University of Chicago Press, Chicago, 1934.

of the mountains to the sophisticated Spaniards and Chinese in Manila were many and complicated, but they were nothing like so difficult as those having to do with health and education. Military authorities worried about the ability of the United States to defend the islands. The Filipinos themselves did not appreciate the benevolent supervision of Uncle Sam and spent a great deal of their energy agitating for independence. The anti-imperialists in the United States could not forget the precedent established by the seizure of a people who did not relish American occupation and requested the government in Washington to undo what they regarded as evil.

Movement for Independence But it remained for the sugar and vegetable-oil lobbies in the United States to sever the Gordian Knot—or so it seemed at least at the time. The Philippine Islands are large producers of sugar cane and copra and their chief market after American occupation was the United States. The producers of cane and beet sugar and of cotton seed and vegetable oils in the United States resented the competition of Philippine products which they claimed were produced by cheap labor and under circumstances which menaced their own solvency. When sugar and vegetable oils became a glut on the market in the early 1930's, the American pressure interests girded themselves for a last desperate fight in Washington which was aimed at removing or at least drastically reducing the threat offered by the Philippine planters. Finally, in 1933, with the assistance of organized labor, which objected to Filipino immigration, and the moral support of the anti-imperialists, they managed to cause Congress to pass an act which provided for the complete independence of the Philippines after a period of ten years of gradual weaning away. The President vetoed the bill, but the pressure on Congress had in the meantime become so irresistible that the necessary two-thirds vote was forthcoming to override the veto. This act provided that the approval of the Philippine legislature must be given within one year if the act were to become effective. The Filipinos professed disappointment at some of the reservations contained in the act of 1933 and hoping to secure more favorable concessions did not accept it.

Act of 1934 Despite the failure of the 1933 effort, the pressure interests did not lose heart and in 1934 persuaded Congress

to pass a second act which followed the general outline of the earlier act, though it contained several modifications suggested by the Filipinos.[9] This was regarded in Manila as the best that could be expected and consequently it was accepted and shortly became effective. The Filipinos were authorized to choose delegates to a convention which would be charged with drafting a constitution for the islands; this was speedily done and a constitution was drawn up and having been approved by the President of the United States was ratified by the voters of the islands. Important reservations permitted the United States to continue a considerable measure of control over the Philippines until the ten-year period had elapsed, though in ordinary civil affairs the Commonwealth of the Philippines was given a free hand.[10] Despite the occupation by the Japanese, the date set by the act of 1934 was retained and the Philippines became an independent nation in 1946. However, to assist in strengthening the new government Congress authorized free imports into the United States for eight years to be followed by a period of twenty years with gradual imposition of tariff barriers. The United States retains certain military bases needed for its Pacific defense.

THE DISTRICT OF COLUMBIA

A number of governments, including Argentina, Brazil, and Mexico, separate the national capital from the rest of the country and provide for its direct administration by the central government. The framers of the Constitution realized that the rivalry and jealousy among the states was such that it would be unwise, indeed almost impossible, to locate the permanent seat of the national government within the confines of any one of them. Negotiations were started immediately and the first Congress which convened in 1789 staged a long-drawn-out and frequently highly emotional debate as to whether the capital should be located in the North or the South. A compromise which favored the South was finally reached; the necessary land was ceded; and the seat of the govern-

[9] The acts of 1933 and 1934 are discussed in Grayson Kirk, *Philippine Independence; Motives, Problems, and Prospects*, Farrar & Rinehart, New York, 1936.

[10] Additional information relating to the governmental structure of the commonwealth will be found in G. A. Malcolm, *The Commonwealth of the Philippines*, D. Appleton-Century Company, New York, 1936.

ment was moved to the District of Columbia on the Potomac in the year 1800.

Early Provisions Having recently fought a war on the principle of "No taxation without representation," it was considered only appropriate that the inhabitants of the District of Columbia, though not residing in a state and therefore not entitled to elect Senators and Representatives in Congress or members of the electoral college, should be given a measure of local self-government. So for approximately three quarters of a century the residents of the District who qualified as voters betook themselves to the polls and elected a mayor and members of a city council who were entrusted with the ordinary functions of local government. But this arrangement did not work out too well in practice, though there is some question whether it was particularly more objectionable than local government elsewhere at the time. These were the years immediately preceding the writing of the devastating account of city government in the United States by Lord Bryce.[11] Washington was no exception to the general situation and its local government was characterized by graft, extravagance, and inefficiency under a notorious politician often branded a political boss. Disgusted with the stench that arose from bad government Congress in 1878 decided to abolish local self-government and place the administration of district affairs directly in the hands of agents of the national government.

Legislative Provisions Congress makes the necessary ordinances, levies taxes, and appropriates funds for the District of Columbia. In reality Congress has so many other matters to attend to and its members are in so many cases indifferent to district affairs that it delegates much of its authority to the standing committees on the District of Columbia. These committees have so much authority in district affairs that they are sometimes known as the "Washington City Council"; they have to have the formal approval of Congress as a whole for most of their actions, including financial measures, but this is ordinarily forthcoming.[12] The

[11] See his *American Commonwealth*, rev. ed., 2 vols. The Macmillan Company, New York, 1920, Vol. II, Chaps. 88-89.

[12] However, Congress does not always follow the recommendations of the district committees. For example, it refused to accept recommendations made in 1940 which would have increased the share of the national Treasury in district expenses.

congressional committees work in conjunction with the commissioners and in many instances accept recommendations which are made by the commissioners.

Commissioners Not having a mayor or city manager, the District of Columbia is administered, subject to the control of Congress or its committees on district affairs, by three commissioners.[13] Two of these are appointed by the President with the consent of the Senate from among the residents of the district; both major political parties must be represented and terms are for three years. The third commissioner is an officer of the Engineer Corps of the Army who is detailed by the President for an indefinite period for such service. As a group the commissioners have the power to make routine regulations relating to public safety, health, and the use and protection of property. They also appoint the officials who carry on the many functions entailed in running the district and supervise the general operation of all branches of the district government, with the exception of the schools, which are entrusted to a board of education appointed by the judges of the local district court. Each commissioner assumes immediate charge of a section of administration; thus the engineer handles public works, another protection of persons and property, and a third health and public welfare.

An Evaluation For many years the affairs of the District of Columbia have been administered with at least reasonable efficiency and with no flagrant cases of corruption. The streets are adequately paved and maintained and indeed most of the public works seem to be well above average. However, the public welfare services have been far less satisfactory and in certain cases have almost been scandalous; the tuberculosis incidence, for example, among the Negro population because of poor housing and other intolerable conditions is shocking. The national government pays a share of the costs of operating the District of Columbia because it owns much of the property which has a tax-exempt status. The residents of Washington complain bitterly at the size of the federal contribution,[14] maintaining that they are forced to pay for services

[13] For an extensive account of the government of the district, see L. F. Schmeckebier, *The District of Columbia: Its Government and Administration,* Brookings Institution, Washington, 1928.

[14] It amounts to approximately $12,000,000 per year.

which in all fairness should be borne by the government whose property benefits. Dissatisfaction among the inhabitants of Washington has reached such a point that several congressional investigations have been made.[15] By 1946 a strong movement had developed to permit the citizens of the District to manage their own local government, to be represented in Congress, and to vote in presidential elections.

Selected Bibliography

Anderson, W. H., *The Philippine Problem*, G. P. Putnam's Sons, New York, 1939.

Barber, Joseph, Jr., *Hawaii, Restless Rampart*, The Bobbs-Merrill Company, Indianapolis, 1941.

Clark, V. S., and others, *Porto Rico and Its Problems*, Brookings Institution, Washington, 1930.

Cochran, Hamilton, *These Are the Virgin Islands*, Prentice-Hall, New York, 1937.

Dulles, F. R., *America in the Pacific*, rev. ed., Houghton Mifflin Company, Boston, 1938.

Evans, L. H., *The Virgin Islands*, J. W. Edwards, Ann Arbor, 1945.

George, W. H., and P. S. Bachman, *The Government of Hawaii, Federal, Territorial, and County*, University of Hawaii Press, Honolulu, 1934.

Hawaii Bureau of Governmental Research, *Our Territorial Government*, Hawaii Bureau of Governmental Research, Honolulu, 1937.

Haas, W. H., *The American Empire*, University of Chicago Press, Chicago, 1940.

Hayden, J. R., *The Philippines*, The Macmillan Company, New York, 1941.

Homan, P. T., and others, *Puerto Rican Problems*, American Council on Public Affairs, Washington, 1940.

Keesing, F. M., *The Philippines; A Nation in the Making*, Kelly & Walsh, New York, 1938.

Kirk, Grayson, *Philippine Independence*, Farrar & Rinehart, New York, 1936.

[15] It may be added that the dissatisfaction among the residents is not of recent origin. In the late 1920's L. F. Schmeckebier and W. F. Willoughby took cognizance of this in their book *The Government and Administration of the District of Columbia: Suggestions for Change*, Brookings Institution, Washington, 1929.

Littler, R. M. C., *The Governance of Hawaii*, Stanford University Press, Stanford University, 1929.

Malcolm, G. A., *The Commonwealth of the Philippines*, D. Appleton-Century Company, New York, 1936.

Schmeckebier, L., *The District of Columbia; Its Government and Administration*, Brookings Institution, Washington, 1928.

——, and W. F. Willoughby, *The Government and Administration of the District of Columbia; Suggestions for Change*, Brookings Institution, Washington, 1929.

Spicer, G. W., *The Constitutional Status and Government of Alaska*, The Johns Hopkins Press, Baltimore, 1927.

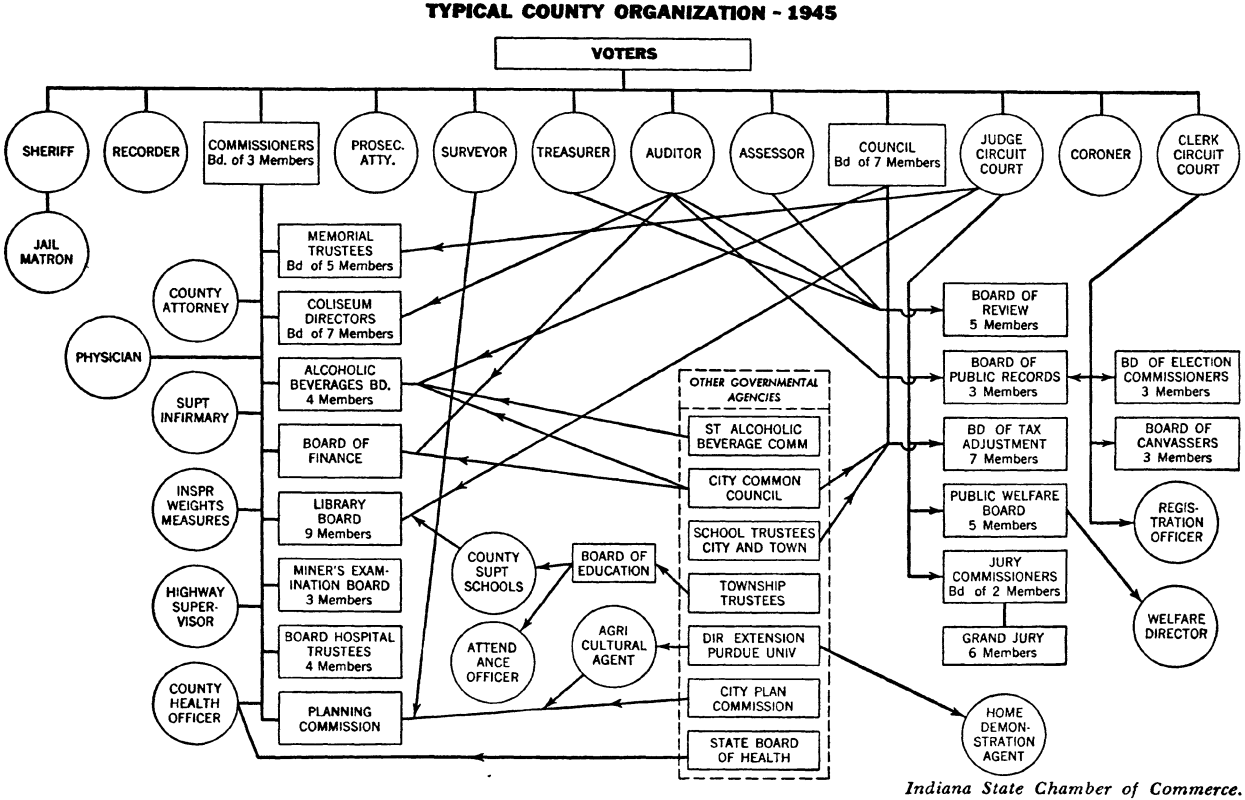
37 · *County Government*

The Nature of a County The county is the political unit which is immediately below the state in the hierarchy of American government. Every state, with the exception of Louisiana,[1] is subdivided into counties which serve as administrative units for many public purposes and perform certain governmental functions entrusted to them. There are some 3,100 of them all told in the United States, varying from 3 in Delaware to approximately 250 in texas. A typical state has anywhere from fifty to one hundred counties, though there is considerable variation even in states that have about the same area and population. The average county has an area of something like one thousand square miles and a population of more than forty thousand.

Legal Basis of Counties Counties usually are given legal foundation by state constitutions. A state constitution may go so far as to specify the number of counties and lay down the exact limits of the counties stipulated, but that is not the rule. Ordinarily counties are created by state legislatures, subject to constitutional limitations which make it necessary in some instances to secure the consent of the people involved.

Counties a Product of the Horse-and-Buggy Days Although counties perform many important functions, they are in their present form a survival of the days when transportation facilities were poor. A horse and buggy could conveniently make a round-trip journey of twenty miles or so over dirt roads from the farm to the county seat in a single day and counties were laid out on that basis. Now that improved roads permit automobiles to drive ten times or more as far in a day, it is an anachronism to retain counties of four hundred or so square miles. Courts and a full complement of county officers in each county are an expensive proposition, particularly when the amount of work is comparatively

[1] Louisiana has parishes which bear some resemblance to counties.



Indiana State Chamber of Commerce.

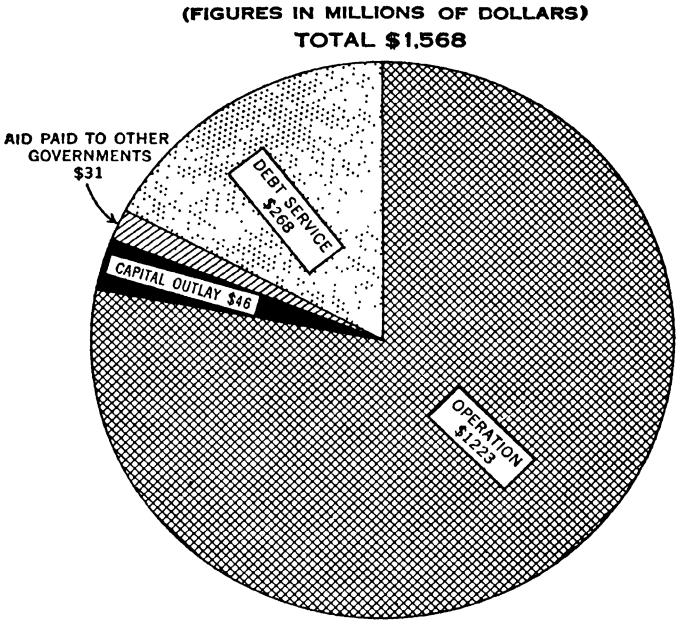
TYPICAL COUNTY ORGANIZATION IN INDIANA

small. The number of inhabitants and the resources of many counties are such that adequate services cannot be rendered. Nor is the present-day county very satisfactory as an administrative unit of the state because of its small area and population. Yet determined efforts to consolidate counties in order that the taxpayers' money might be saved and more efficient services rendered have knocked themselves against a stone wall and achieved very little. Legal difficulties constitute somewhat of a barrier to county consolidation, but far more important is the opposition of the local residents.

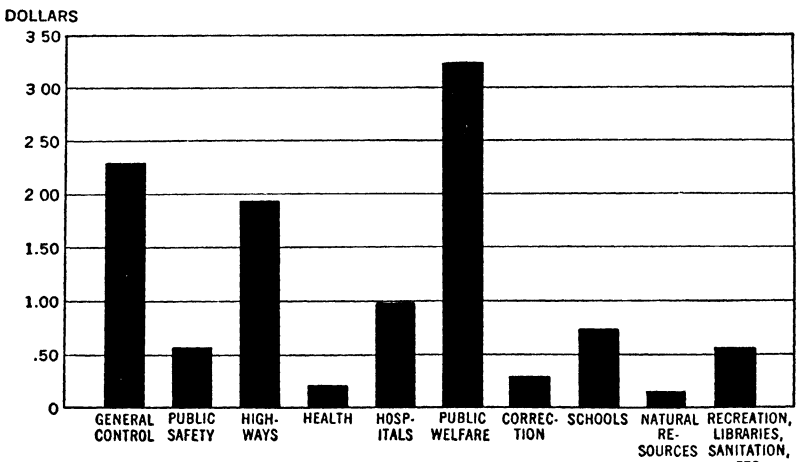
Fundamental Character of County Government In so far as form of government is concerned, counties do not fit into the American pattern. The typical American pattern divides government into three branches: executive, legislative, and judicial, and provides that each shall be separate. Curiously enough county government is not divided into these three branches; there is union rather than separation of powers; and there is no single executive to assume a position of leadership. It is true that a few counties have seen fit to hire county managers and that even where they have pursued the ordinary course there is similarity to those cities which have the commission or manager-council forms to the extent that authority is centered in a group of elected officials known as a "council," "commissioners," or "board."

Basis of County Functions The more detailed state constitutions sometimes devote considerable attention to the functions which counties are to exercise, but the general assembly is usually permitted some authority in adding new responsibilities and defining old ones. Where state constitutions are brief, the legislature is entrusted with almost full power to control county government, subject to limitations which are specifically laid down. Inasmuch as counties have undergone something of the same development which has been noted in the cases of the national government and the states, the functions which are currently performed are different from those associated with these units twenty-five or more years ago.

General Character of County Functions Some states authorize their counties to assume functions which are not to be found in the counties of other states. In general, counties are expected to maintain law and order, keep records, perform certain fiscal duties, inspect rural public schools, grant permits and licenses of one kind



GENERAL EXPENDITURE OF COUNTY GOVERNMENTS, BY CHARACTER. 1943



Bureau of the Census.

EXPENDITURES OF COUNTY GOVERNMENTS: 1943

or another, investigate cases of unexplained death, operate institutions such as jails and poor farms, direct the improvement and maintenance of certain roads, and supervise the granting of relief to the indigent as well as other welfare activities. In addition, counties are ordinarily the units of government upon which the state judicial system, a part of the state tax structure, and the election setup are based. In many states counties are also taken into account in dividing the state into the districts for the election of state representatives and senators.

The County Seat The county offices are located in a city or town which is designated the county seat. In some counties there is one city which so overshadows the other cities and towns that it is obvious that it will be the center of county government. But in other counties there may be several cities of substantially the same population and importance, each one of which will be sure that it should be the county seat. Inasmuch as only one place can receive the honor, it is not uncommon to encounter bitter rivalry, sometimes going back for a hundred years. The location of the county seat is usually determined by the voters, though there are restrictions in some constitutions which limit the frequency of submitting such a question.

The County Board With a very few exceptions [2] counties operate under the general guidance of boards, commissioners, or supervisors who are elected by the voters.[3] These are usually comparatively small bodies of from three to seven members,[4] but Wayne County, Michigan, has more than one hundred. They may be elected at large from the county or from districts into which a county has been divided; in some of the southern states they are ex officio in character, holding their positions on the county board because they are judges, justices of the peace, county clerks, and other county officers. Unlike state legislatures or city councils, county boards do not ordinarily have elaborate organizations. There are no mayors, speakers, or lieutenant governors to preside over sessions of county

[2] Georgia and Rhode Island have no county boards.

[3] In Connecticut and South Carolina members are appointed rather than elected.

[4] Among the states which have large boards are the following: Illinois, New Jersey, New York, Michigan, Nebraska, Virginia, Arkansas, Missouri, Tennessee, and Kentucky. It may be added that not all of the boards in these states are necessarily large.

boards, though in a few instances a president is elected by the voters for that purpose. But in most counties it is customary to elect the members of the county board as equals, leaving it up to them to choose one of their number to preside. If boards are made up of three or five members, the role of the chairman is usually nominal, since it is possible to carry on business in a most informal fashion. However, if boards run to fifteen or more members it is obviously necessary to have some provision for seeing that proceedings are carried on in an orderly fashion. Rules are not emphasized in the smaller boards, nor are committees likely to be of great importance. Where there are numerous members some attention must be paid to rules and committees may be appointed to handle much of the business, at least in its preliminary stages. Regular meetings of county boards which may last a few hours or again several days are scheduled every month, while special meetings may be called at the pleasure of the members.

General Functions of County Boards County boards perform the functions which are entrusted to them by state law, which, of course, means that there is considerable variation from state to state. Moreover, some states differentiate among their own counties, giving some boards more extensive authority than others. In general, it may be stated that the county board has a little legislative authority, some executive power, and a considerable amount of administrative responsibility. It is the mainspring of the county government, providing for the financing and co-ordination of the other parts of county government. Aside from levying taxes, appropriating public funds, and incurring indebtedness, county boards do not ordinarily possess substantial legislative power and consequently are not known for the statutes or ordinances which they enact. In an executive capacity they have some appointing power and represent the only centralizing authority there is in the county. They may appoint the superintendent of the poor farm, the county road supervisor, the county health officer, the county purchasing agent, the county attorney, and other officials, being given the authority in some states to fill vacancies in elective offices in the county. In the more important counties there may be large numbers of employees in connection with roads, public works, and related county functions. In several cases these positions are filled under the merit system, but in most counties the spoils system remains in full force. It is not

uncommon for the members of the county board to divide the positions into shares, with each member or each member of the majority clique being given a free hand in disposing of his quota. The bulk of the business of the county board may be classified under the following headings: public works, purchasing, finance, elections, charities and corrections, and miscellaneous.

Other County Officers The states do not agree as to how many county officers there shall be in addition to the members of the county board. In Rhode Island only a sheriff and a clerk are provided, while at the other extreme are metropolitan counties which may have fifty or more officers, if one counts the judges of the courts. In general, counties have from half a dozen to a dozen or fifteen officers, most of whom are elected by the voters for two- or four-year terms. The elective character of most of these county officers promotes an independence which is one of the outstanding characteristics of county administration. The county board has some control through its power to appropriate the necessary funds, but aside from that each officer feels that he is entitled to run his department about as he pleases as long as he meets the approval of the people. In those few counties which have reorganized and placed a manager at the head of county administration, this situation does not, of course, exist.

The Sheriff In certain urban counties the sheriff is about as useless a functionary as can be imagined, since the police departments perform most of the duties which are ordinarily handled by that officer and his deputies. However, in the numerous counties which are primarily rural in character—and in four out of five of all counties there is no settlement larger than ten thousand—the office of sheriff continues to be ranked first among all county officers. Sheriffs ordinarily have two types of duties attached to their offices: police and court. They are theoretically responsible for maintaining law and order in their counties and in small rural counties may actually do a considerable amount of this work. They are responsible for keeping the county jail and frequently reside in the quarters attached to that institution. In more populous counties there is less of this type of work to be performed, since cities and towns have their own police officers and constables and even their jails. In the metropolitan counties there may be little or no police work to be done by the office of sheriff, inasmuch as large police

forces which are well equipped render the sheriff and his deputies supernumeraries. More time-consuming in most counties are the duties which are attached to the county, circuit, or intermediate state court based on county lines. In many instances the sheriff or his deputies are expected to be in attendance at all sessions of the court to open the court, keep order, and otherwise carry out the instructions of the judge. In criminal cases he or his representative is in charge of the accused during the trial, seeing that the latter is present at the time wanted and kept safely when court is not in session; after sentence has been imposed the sheriff is the agent of the court in delivering the prisoner to the designated penal institution. In both criminal and civil cases the sheriff's office has a good deal to do in serving subpoenas on witnesses both for the state or plaintiff and for the defense. In civil cases writs attaching property may have to be served; judgments may be executed by seizing and selling property at auction.

Prosecuting Attorney Attached to intermediate courts there are prosecuting, district, state's, or county attorneys whose jurisdiction usually covers a single county, though their titles may suggest some other arrangement. These officials are legally state officers and sometimes draw their salaries from state funds, but they are usually regarded by the people as county officers. In co-operation with the sheriff's office the prosecuting attorney is expected to enforce the laws relating to crime. He assists the police in investigating crimes, brings suspected persons to the attention of grand juries, goes before a judge and requests the holding of an accused person for trial upon the basis of information, and prepares the state's case against accused persons who are being given a judicial trial. The prosecutor may take the initiative against gamblers, bookmakers, slot-machine operators, and organized vice. He has a great deal to say as to whether charges will be pressed, since grand juries ordinarily follow his advice in returning indictments. If he does not regard an indictment as adequate, he may delay trial and even ask the judge to quash an indictment.

County and Court Clerks Counties may provide either a county clerk or a court clerk, or both. If there is a court clerk only, a recorder may be authorized to handle the recording of deeds, mortgages, and other routine items which in other counties receive the attention of a county clerk. Any intermediate court has many

records which have to be kept. A docket is necessary so that the court may know what cases it has to give attention to; a transcript has to be made of what goes on in the formal sessions of the court. The various papers, exhibits, and affidavits which are submitted in connection with a case have to be kept in such form that the judge and the attorneys may have access to them. After the court has decided on the case, a record must be made of the exact judgment, decision, or decree which is made. In case an appeal is taken there must be records that can be transmitted to a higher court, while archives must be preserved so that reference may be made to a given case at some future time. The clerk of the court or the county clerk, as the case may be, cares for these tasks either in person or through deputies whom he appoints. In addition to the multiplicity of court records, there are many other records that even the most rural county finds it desirable to keep. The ownership of real property is recorded when deeds are filed; liens on such property become public knowledge when mortgages are recorded. Vital statistics of several kinds are now regarded as essential; hence the clerk keeps records of births, deaths, and sometimes of serious cases of disease.

Welfare Department A decade ago one heard little about the county welfare department and indeed most counties did not have them. Now with the social security program in full swing the county welfare department is often one of the busiest and most important of the county agencies. It may be a single-head department or it may follow the board pattern, but in any case it has a director who manages the day-to-day conduct of business. Social workers are employed to investigate applications and to supervise the cases after they have been accepted for assistance. Stenographers and clerks are required to keep the case histories which are considered of fundamental importance. We have noted the far-reaching social security program of the national government in connection with our study of the federal administrative agencies.[5] In connection with state government the state's role in social security came in for attention.[6] Now in the county we finally come down to the office which directly administers much of the program. Old-age insurance is handled entirely by the federal authorities; unemployment insur-

[5] See Chap. 26.
[6] See Chap. 34.

ance ordinarily does not require much attention from the county welfare department. But old-age assistance, aid to dependent children, programs intended to help crippled children, pensions for the blind, and outdoor relief are entirely or in part supervised by the county welfare departments in most of the states. Inasmuch as the test of a program is in the service which it renders to its recipients, it must be apparent that the final basis for evaluating the social security system is to be found in the county welfare departments. If they are honeycombed with politics and grant relief or approve old-age assistance applications on the ground of political considerations, it is evident that the program is far from adequate. If well-meaning but untrained persons attempt to decide whether relief and assistance are required in specific cases, it is altogether probable that deserving cases may be refused and more spectacular ones which appeal to the eye but are actually less necessitous will receive attention.

Other County Departments In addition to the departments and offices which have been mentioned, counties frequently maintain a number of others, including coroners, assessors, surveyors, school superintendents, boards of tax review, election boards, overseers of the poor, and so forth. Some of these are filled by popular election, while others may be appointed by judges, township trustees, the county board, and other agencies. Most of these offices or departments are self-explanatory and in general are of secondary importance.

The Council-manager Plan for Counties The lack of coordination and unified direction, so striking features of conventional county government, have caused some people to advocate a drastic reconstruction. In so far as this movement has developed beyond the paper stage it has usually involved the application of the council-manager plan to county government. In general, the few counties that use the plan seem to be quite pleased,[7] though San Mateo County, California, has abandoned it. Nevertheless, vested interests are so firmly entrenched in most counties that it will require a great deal of effort to bring about any general employment of county managers.

[7] For the experience in one county, see Edward Overman, *Manager Government in Albemarle County, Virginia*, University of Virginia Press, Charlottesville, 1940.

Selected Bibliography

Andrews, C., *Administrative County Government in South Carolina,* University of North Carolina Press, Chapel Hill, 1933.

Bosworth, Karl A., *Black Belt County,* University of Alabama Bureau of Public Administration, University, 1941.

Bradshaw, W. L., *County Government Manual for the Missouri Constitutional Convention of 1943,* Author, Columbia, 1943.

Branson, E. C., and others, *County Government and County Affairs in North Carolina,* University of North Carolina Press, Chapel Hill, 1919.

Bromage, A. W., *American County Government,* Sears Publishing Company, New York, 1933.

Carleton, R. L., *Local Government and Administration in Louisiana,* Louisiana State University Press, Baton Rouge, 1935.

Catherwood, M. P., "Rural Government in New York," *New York State College of Agriculture, Bulletin 331,* Ithaca, 1935.

"County and Local Government in Illinois," *Bulletin 12,* Illinois Constitutional Convention, Springfield, 1920.

"County Government and Administration in Iowa," *Iowa Applied History,* Vol. IV, Iowa City, 1925.

"County Government in Massachusetts," *Bulletin 8,* Massachusetts Constitutional Convention, Boston, 1917.

Fairlie, J. A., and C. M. Kneier, *County Government and Administration,* D. Appleton-Century Company, New York, 1930.

James, H. G., *Local Government in the United States,* D. Appleton-Century Company, New York, 1921, Chaps. 2-5.

Kilpatrick, W., *Problems in Contemporary County Government,* University of Virginia Press, Charlottesville, 1930.

Lancaster, Lane W., *Government in Rural America,* D. Van Nostrand Company, Inc., New York, 1937, Chaps. 3, 8-9.

Murphy, W. C., *County Government and Administration in Texas,* University of Texas Press, Austin, 1934.

Ohio Institute, *County Organization and Government in Ohio,* Columbus, 1932.

Overman, Edward, *Manager Government in Albemarle County, Virginia,* University of Virginia Press, Charlottesville, 1940.

Porter, Kirk H., *County and Township Government in the United States,* The Macmillan Company, New York, 1922, Chaps. 5-14.

Prescott, F. W., *County Finance in the South*, Southern Methodist University, Dallas, 1937.

Reed, T. H., *Twenty Years of Government in Essex County, New Jersey*, D. Appleton-Century Company, New York, 1938.

Snider, C. F., *County and Township Government in Indiana*, University of Illinois Press, Urbana, 1936.

Wager, P. W., *County Government and Administration in North Carolina*, University of North Carolina Press, Chapel Hill, 1928.

Wells, Roger, *American Local Government*, McGraw-Hill Book Company, New York, 1939.

38 · *Cities and Other Local Governments*

CITIES

More than half of the people of the United States now reside in urban localities under the census definition;[1] approximately 45 per cent live in ninety-six metropolitan areas; and the number of places of twenty-five hundred population or over exceeds three thousand. Five cities in the United States have more than one million inhabitants, thus ranking with the population giants of the world, while an additional eight fall into the half million to a million class. Almost one hundred cities have populations of one hundred thousand or more.[2]

Legal Basis of Cities As in the case of counties, cities are the legal creations of states. Hence their very existence in the first place as well as their governmental structures and powers depend upon the will of the states in which they are located. Inasmuch as the states see fit to lay down varying rules in regard to the essentials of city status, there is no such thing as a single type of American city. Illinois and Nebraska, for example, stipulate only one thousand people as the minimum population a city must have; Ohio requires five times that number; while New York and Pennsylvania demand that every municipality have at least ten thousand inhabitants. Some states continue to make special provisions for the government of each city, but state constitutional provisions prohibiting special legislation cause other states to handle municipal affairs by general statutes.

[1] The census definition includes all places of 2500 or over. In 1940 56.5 per cent of the population was reported as urban as against 56.2 per cent in 1930.

[2] Ninety-two in 1940.

Charters The forty-eight states make various provisions for municipal charters, but in general there are the following types: (1) special, (2) general, (3) classified, (4) home rule, and (5) optional. Where special legislation is permitted, individual cities may receive special consideration from the general assembly in the form of a charter drafted to meet the needs of that city. This system requires a considerable amount of time from the legislatures, often leads to favoritism and discrimination, and has been banned in many of the states, though in theory at least it has some advantages. Under the general charter system every city in a state is forced to operate under the same charter, irrespective of size or problems. This is a good deal like providing a single size of clothing for all people. A much more popular type is known as the classified charter. Here the legislature divides cities up into three to seven or more classes, providing by general law for the government of cities which fall into a single class. Classified charters make it possible to adjust the form and powers of government to the needs of the city to some extent at least and at the same time rule out the discrimination which is so frequently associated with special charters. Those states which permit home rule to cities authorize the people of the city to prepare their own charter, subject to the provisions of the constitution and laws of the state. No other type of charter fits into local needs as well as the home rule, but it is increasingly difficult to draw the line between purely local functions and state functions, with the result that home-rule charters frequently occasion a great deal of litigation before they are settled.[3] The final type of charter is the newest and attempts to avoid the defects of the others, while at the same time conferring their advantages. Under this system general assemblies prepare several charters—usually including a strong-mayor and weak-council type, a weak-mayor and strong-council type, a council-manager type, a commission type, and a small-city type—from which a selection may be made by any city. This permits local choice, avoids legal ambiguity, and rules out discrimination, but it has been less popular than was predicted a few years ago.

Forms of City Government The several states may vary

[3] For an incisive discussion of home-rule charters, see J. D. McGoldrick, *The Law and Practice of Municipal Home Rule, 1916-1930,* Columbia University Press, New York, 1933.

widely in the qualifications laid down for cities and in the powers granted to municipalities, but most of them are not far apart in the matter of structure. There are three basic forms to be encountered more or less everywhere throughout the United States: (1) the mayor-council, (2) the council-manager, and (3) the commission.

1. *Mayor-council Government* The oldest and most prevalent form of city government in the United States provides for a mayor and a council. Despite the competition offered by the newer forms, more than one thousand out of the some eighteen hundred cities with populations of five thousand or over continue to use the mayor-council system. Under the English usage the mayor-council form made the mayor something of a figurehead and conferred the general authority over municipal affairs on the council. But there has been such a far-reaching development in mayor-council government in the United States during the last century and a half that it now presents a sharp contrast to the English borough system. Everywhere the mayor has taken on great authority and the council has surrendered power, until in those cities where the movement has gone farthest the mayor now definitely overshadows the council. It should be emphasized that some cities have made their mayors much more powerful than others, with the result that it is customary to classify cities using this form as strong-mayor and weak-council types or weak-mayor and strong-council types.

The Office of Mayor Though mayors are elected by the council under the English system, in the United States they are everywhere chosen by the voters. Terms run for either two or four years, with the trend being toward the longer term, though many cities continue to prefer the former. Re-election is permitted in most instances and is actually accorded in many cities if mayors are reasonably popular. In small cities a salary of a few hundred dollars must satisfy anyone who holds the office, but in larger cities more generous remuneration is naturally forthcoming inasmuch as the office calls for the full time of the incumbent. In a number of cities mayors are at least in theory selected on a nonpartisan basis, while in others the familiar Republican-Democratic labels or strictly local party affiliation is the rule. A few cities make use of preferential voting in electing a mayor, but the great majority find the ordinary plurality arrangement satisfactory.

General Functions of the Mayor The exact functions of a mayor vary from city to city, depending to some extent upon the size of the city and also upon whether the strong-mayor and weak-council or the weak-mayor and strong-council plans are in use. In small cities the mayor may spend an hour or so a day on public duties, devoting the remainder of the time to his private affairs. In such cases he confers with the police and fire chiefs and the superintendent of public works rather frequently, sits in the mayor's court in those states which provide such courts, and presides over the sessions of the city council once or twice each month. In large cities the mayor's duties are ordinarily more varied. He usually spends several hours each day in his office, going over papers, attending to correspondence, conferring with administrative officials and politicians, and receiving individual citizens and delegations. Public occasions require a great deal of time from the mayor of a large city. Dedications, cornerstone layings, reception of distinguished visitors, attendance at dinners, receptions, and luncheons, welcoming conventions, and other similar affairs almost invariably constitute a heavy drain on the time and the energies of a metropolitan executive.

Specific Powers Whether he presides over the sessions of the council or not, the mayor ordinarily keeps closely in touch with what is going on in that body. He sends in messages and recommendations which may or may not have decisive effect; in most cities he has some sort of veto, though it is usually possible for the council to override his veto by a two-thirds or three-fourths vote. In many cities the mayor prepares the budget for submission to the council and in some places he receives virtually complete financial control through a provision that the council may not add new items nor increase already existing ones. Transfers of funds by departments from one purpose to another after the budget has been passed frequently require the approval of the mayor. In almost every case the mayor appoints the heads of the administrative departments in so far as they are not popularly elected, though the consent of the council may be specified. If there is no civil service machinery the mayor may have much to do with minor appointments. In general, mayors also have the power to remove those whom they have appointed, though some charters limit this by stipulating that the council shall agree.

Composition of the Council At the beginning of the century city councils followed the bicameral pattern which is familiar in Congress and the state legislatures. Not content with two houses, it was customary to make each chamber quite sizable, sometimes fifty or more. At the present time there are almost no bicameral city councils [4] left, while reasonable size is emphasized in the case of the unicameral chamber. In small cities it is not uncommon to find only five or six councilmen; in the very largest cities the number varies from approximately nine to fifty,[5] with very few exceeding twenty. The most popular system of selection for many years made the ward the basis and gave victory to the candidate who received the largest number of votes. The ward plan encouraged logrolling and undue interest in neighborhood problems at the expense of city-wide welfare; consequently there was a movement toward electing all of the councilmen at large. Certain cities have not been satisfied with election at large, claiming that some sections and interest groups are not represented at all under such a plan. Proportional representation has been adopted by Cincinnati and several other cities in order to get away from purely partisan elections, while a number of cities find it desirable to elect some councilmen at large and others on the basis of districts or wards. Election at large may be accompanied by a requirement that the members be distributed among the various sections of a city.

Organization If the mayor is not authorized to preside over council meetings by the city charter, the members proceed to elect one of their number to that position. In the case of small councils the commitee system may have some place, but there is a tendency to conduct business on the floor with all of the members participating. However, if a council has fifteen or more members, committees are usually regarded as quite important. Meetings are ordinarily held once or twice each month in the case of small cities and once each week in the larger municipalities. In the former evening sessions may be held, inasmuch as the councilmen have their private affairs to attend during working hours. In large cities, on the other hand, daytime sessions are the rule. Some visitors find council meetings

[4] It is sometimes stated that the council and board of estimate in New York City constitute a bicameral system, though this is denied by certain New York officials.

[5] Chicago still has a board of aldermen of fifty members.

exceedingly tedious, while others remark at the lively character of the proceedings. A great deal depends upon the city and the time. Ordinary sessions may be more or less cut-and-dried affairs with little more than routine business being transacted, but occasionally a controversial question of general interest will produce spirited debate.

Functions of City Councils City councils pass the ordinances or bylaws which regulate public health, safety, and morals within a city, but there is less scope for this type of action than in the nation or a state. Taxes must be levied, appropriations made, and debts authorized. In case no other provision is made, councils grant franchises to street railway, bus, electric, and other utility companies which desire to use the streets and alleys and other public property. Large contracts which provide for the construction of buildings, the paving of streets, and the acquiring of land frequently require the approval of the council. In so far as the charter permits, the council may provide for the organization of the administrative departments, fix salaries of municipal employees, authorize the merit plan in municipal employment, and handle other matters relating to the administrative side of city government. It may be added that there is wide variation in the authority which councils exercise in all of these spheres. A strong council may take the leadership in city government and be very active in all of these fields, while a weak council may do little more than go through the motions of rubber stamping appropriations, approving contracts and franchises, and assenting to other proposals made by the mayor.[6]

2. The Council-manager Plan Early in the present century there came into operation a plan of city government which is now used by approximately eight hundred cities scattered throughout most of the forty-eight states.[7] This form has now become second only to the mayor-council system in popularity.

Fundamental Difference between This and Other Forms As we have noted, the mayor-council type of government embodies

[6] For additional discussion of the division of power between the council and the mayor, see C. G. Shenton, *Executives and Legislative Bodies of American Cities,* University of Pennsylvania Press, Philadelphia, 1937.

[7] Forty-three states have one or more council-manager cities. The South, the Pacific coast, and the Middle West have given the most support to the movement. Michigan, Florida, Texas, Virginia, California, and Maine head the list, with more than forty adoptions each. See International City Managers'

the conventional theories of government which characterize the United States; there are the familiar branches and these are separated from each other. The council-manager system resembles the organization which is to be encountered in private business corporations and emphasizes an intimate relationship between the executive and legislative branches. Policies are determined by the council and put into effect by the manager, who is appointed by and responsible to the council. Instead of having independent administrative departments which may lack co-ordination and owe responsibility to voters, mayors, councils, courts, and even state governments, the council-manager plan brings all of these under the manager. Closely associated with although not restricted to this form of government are the twin principles of a public personnel recruited on a merit basis and expert direction of the municipal services by professionally trained persons.

The Mayor Council-manager cities usually have mayors, but one should not be misled by the title into assuming that these officials correspond to mayors under the mayor-council form. It is convenient to have someone to represent the city on formal occasions; moreover, many people feel a sense of loss if there is no official bearing the title of mayor. Mayors under the council-manager system are frequently chosen by the council, though in some cases it is provided that the councilman who polls the largest number of votes shall receive this honor. At any rate they are members of the council, preside over sessions of the council, and exert more or less influence on council proceedings, but they do not have appointing power nor can they veto acts of the council. The responsibility for supervising administrative activities is, of course, slight, since the manager gives primary attention to this aspect of city government.

The Council There is some tendency to confuse the council under the council-manager form with the council under the mayor-council plan. Superficially they are similar, but in reality their roles are not always the same. The former council ordinarily has from five to nine members, who are chosen by proportional representa-

Association *Recent Council-Manager Developments and Directory of Council-Manager Cities*, International City Managers' Association, Chicago, 1948.

tion [8] or plurality voting for terms of two or four years. The organization is more or less similar to that encountered under the mayor-council type. Committees may be made use of on special occasions, but there are seldom the standing committees which feature certain councils under the mayor-council system. Meetings are held once or twice each month in smaller cities and once each week in larger ones. The council passes ordinances, appropriates money, levies taxes, and authorizes loans. This far it does about what is expected of an ordinary council. But in addition, it has to choose a manager, lay out policies which he is to follow in operating the administrative departments, receive reports from him as to the conduct of municipal affairs, and decide when his services are no longer such that he can be retained as city manager. The council is not supposed to interfere with the detailed operation of the administrative agencies; nor is it proper for it to dictate the appointment of administrative heads or of minor officials. It may be added that in practice it is frequently very difficult for the council members to resist such temptations and that this constitutes one of the most serious problems under this form of government.

Local versus Professional Manager One of the first questions which arises when a manager is to be chosen is whether a local man is to be taken or whether the position will be thrown open to outsiders. From the standpoint of local psychology there is perhaps something to be said in favor of naming a townsman. However, from the standpoint of effective operation of the council-manager form this practice is ordinarily a questionable one. In most instances it is not probable that there will be a local man who has the background which is desirable. Furthermore, a hometown product will have his local likes and dislikes, his social ties, and a rather definite point of view relating to local matters, thus making it difficult for him to do all that is expected of a manager. Finally, if there is to be a profession of city manager, it is essential that there be opportunities to move from one city to another as manager.

Selection of a Manager Some councils give much attention to the choice of a manager, setting up special committees for that

[8] Cincinnati, Hamilton, and Toledo use proportional representation to elect their councilmen, but most council-manager cities use the ordinary plurality system.

purpose, inviting applications from managers in other cities who are interested, studying the qualifications of the various available candidates, and holding personal interviews with those who are regarded as most promising.[9] On the other hand, there are unfortunately councils which treat the matter as of little importance and more or less blindly take the person who strikes their fancy at the moment. Obviously, the selection process is very important, since it determines in large measure the calibre of the man selected to fill the position. Inasmuch as the success or failure of the manager-council plan depends primarily upon the strength of the manager,[10] it is, of course, of the highest importance that the best possible person be taken.

Functions of Managers In general, the city manager is expected to oversee the administrative side of municipal government, much as the manager or director of a business concern handles the day-to-day operation of his company. He has oversight extending to every phase of municipal activity; he appoints the heads of the administrative agencies; he co-ordinates the efforts of the various departments. Broad policies must be formulated by the council, but the manager may make recommendations to the council and indeed ordinarily participates in the discussion of such matters by the council, though he, of course, has no vote. The manager reports to the council on the operation of the administrative departments and is generally responsible to the council for the efficient record of these departments. The manager ordinarily prepares the municipal budget for the approval of the council and after it has been passed supervises its execution.

Record of the Council-manager Form After more than thirty years of experience it is evident that the council-manager form has a substantial contribution to make.[11] It does not bring about miracles; indeed, the experiences of Kansas City and Cleveland have indicated that political bosses may continue to dominate under this

[9] The International City Managers' Association has prepared a pamphlet entitled *The Selection of a City Manager*, which is sent to each member of a council in those cities which are in the process of choosing a new manager. This offers many valuable suggestions as to how to proceed.

[10] See C. E. Ridley and O. F. Nolting, *City Manager Profession*, International City Managers' Association, Chicago, 1934.

[11] See H. A. Stone and others, *City Manager Government in Nine Cities*, Public Administration Service, Chicago, 1940; and F. C. Mosher and others, *City Manager Government in Seven Cities*, Public Administration Service, Chicago, 1940.

system. Nevertheless, this form encourages progressive city government and at a cost which is ordinarily no higher than distinctly mediocre cities pay.

3. The Commission Form of City Government The commission form, like the council-manager plan, departs from the conventional political pattern which has long characterized the United States. Instead of the executive and the legislative branches being separate and entrusted with different authority, the commission plan consolidates these branches into a single agency, giving to that body both executive and legislative authority. The commission plan also expects the single agency to handle the administrative side of city government and on that point differs fundamentally from the council-manager type, which provides a city manager for that purpose.

The Commission The very heart of this form of government is a commission which is ordinarily made up of from three to seven members. These are elected by the voters for terms of two or four years and except in very small cities are expected to give their full time to public affairs. One of their number is frequently designated mayor, though the title is usually more or less of an empty one.[12] The commission holds public sessions once or twice a month, frequently in the evening so that the citizens may attend in numbers. The proceedings are naturally quite informal, since it is difficult for three or five men to put on much of a formal display.

Functions of the Commission The commission exercises executive, legislative, and administrative functions. As a group the commissioners adopt policies, levy taxes, appropriate money, approve borrowing, and pass ordinances; they also draft a budget, make appointments, order removals, and assume the functions usually entrusted to a mayor in so far as a group can do this. As individuals the commissioners have charge of the various departments into which the city is divided for administrative purposes. Thus one assumes responsibility for the fire and the police departments; another heads the finance department; while a third takes over the public works of the city.

Weaknesses in the Commission Form The lack of a single

[12] Mayors under the commission form sometimes are more than figureheads. For example, Mayor Behrman had a great deal to say about public affairs in the city of New Orleans.

executive is a serious handicap under the commission form, since it usually means that there is no unified direction of the day-to-day operation of a city government. The size of the commission is frequently too small to afford adequate representation to the various major interest groups or geographical areas of a city, with the result that policies may not be wisely decided. Commission government ordinarily has meant amateur administration because the commissioners who rarely possess expert knowledge themselves actually attempt to direct the work of the departments. The merit system of appointment and centralized purchasing have not fared well at the hands of most commissions, though in theory this form emphasizes progressive practices. But what happens in all too many cases is that each commissioner wants a free hand in filling the jobs and making the purchases in his department, with the result that friends, relatives, and political supporters get the favors. Then, too, there seems to be a tendency for the commissioners to divide into two cliques which means that three of the commissioners, if there are five altogether, decide what shall be done, irrespective of the desires of the two minority members. There are instances where the commission plan has worked out well over a period of years, but it is quite improbable that the commission plan can regain the ground which it has lost, and it is even possible that it may eventually disappear from the scene entirely.

NEW ENGLAND TOWNS

Nature of a Town The town is the chief unit of local goverment in most sections of New England which are not urban in character. There are three general types of towns: entirely rural, rural with village or villages, and urban. As the term implies, the rural town is made up of open countryside and includes no settlements of people. The second type of town is primarily rural in character, but it includes one or more settlements of people, usually a few hundred in population. Finally, there is the urban town which is more or less entirely covered by residences, factories, and stores. While there is considerable variation in the area of towns, a commonplace size is thirty to forty square miles. Populations vary even more than do areas—in a rural town there may be two or three hundred people or even less, while at the other extreme are towns with

populations running into tens of thousands, which ordinarily would be designated as cities.

Legal Status In contrast to cities, New England towns are not incorporated, but this is less important than it might seem on its surface, since they exercise many of the rights of municipal corporations. The town is the creation of the state legislature and depends upon the state for authority to deal with local affairs. The exact powers of towns are usually laid down in general statutes or special acts which the legislature from time to time sees fit to pass.

Scope of Town Jurisdiction In general, it may be stated that these units of government perform functions similar to those entrusted to counties and cities in other sections of the United States. They have the power to levy taxes, appropriate public funds, incur indebtedness, and own property; they are subject to legal suit and may themselves sue in courts of law. They may regulate the public health, safety, and morals within their borders by passing bylaws or ordinances. They administer poor relief, conduct public schools, and construct and maintain a network of roads. They may, if the need is sufficiently pressing, engage in supplying water, sanitary facilities, street lighting, public libraries, parks, and hospitals. Even in the most rural town a constable is provided to maintain order and simple provisions are made for fire fighting.

The Town Meeting The principal agency of government in the town is the town meeting which is held at least annually and may be called into special session as the occasion demands. In the towns which are not too populous all of the voters are entitled to attend and participate in the town meeting, though many of them may not avail themselves of this privilege. If a town has more than four or five thousand inhabitants it is difficult to accommodate the voters in a single hall and hence it is sometimes provided that a limited town meeting be set up which is elected to represent the voters. Even if this is not done, the problems of a larger place are such that it is difficult for the assembled citizens to handle them. In populous towns a committee may be appointed to recommend action to the town meeting. But in the small towns which have from seven or eight hundred to four or five thousand inhabitants the town meeting is still often a very active affair. Notices are posted in conspicuous places beforehand to remind voters of the date;

warrants are prepared containing the items of business which are to be considered at the meeting—and no other business may be brought to the floor.

The assemblage of men and women, grandfathers and babes in arms, village storekeepers, schoolteachers, and overalled farmers from the remotest hillside farms is the event of the year. Every road leading to the town hall is likely to be crowded on the morning of town meeting, for this is the day when not only town affairs will be decided but gossip exchanged, business transacted, old friendships and rivalries renewed, and new acquaintances made. A leading citizen, often re-elected again and again, presides as moderator; the town clerk keeps minutes; and the constable is there to maintain order.

Functions of the Town Meeting Within the limits specified by state law, the town meeting is free to handle local affairs. It determines how the town funds shall be spent and what taxes shall be levied; it authorizes the borrowing of money. It decides whether a new school will be built and what roads will be hard-surfaced during the ensuing year. Where the system operates at its best, there is spirited debate on almost every item in the warrant and any proponent of change must make a good case before he can expect to have his project approved. The salty humor of some of the town philosophers relieves the proceedings, which last for hours, of tedium. Voting is by voice unless it is ordered that a standing vote be taken; it may be noted that the latter procedure is often necessary because of the prodigious ayes and nays of minority groups which are especially interested. After attending his town meeting the average citizen knows a great deal about what the town is doing and feels that he has had a part in determining public policies.

The Selectmen Inasmuch as the town meeting is not in frequent session and town problems require more or less constant attention, it is now customary to elect a board of selectmen[13] to act as agents in carrying out the decisions of the town meeting. In addition, the selectmen usually have a certain amount of discretion in dealing with minor matters which arise between town meetings These boards, usually three or five in number of members, include the leading citizens of the town, enjoy considerable prestige and take their responsibilities quite seriously. They hold office for a

[13] Rhode Island designates these officials the town council.

single year in most towns, though in Massachusetts a three-year term is common. In many places selectmen are elected again and again, until they come to a position of great influence, while in other towns there is a feeling that the honor is one that should be passed around among the most prominent families. In many respects the selectmen resemble county boards, but their legal authority is distinctly less because policies are laid down by the citizens assembled in town meeting. However, bills against the town are allowed by the selectmen; contracts are let; roads and sewers are supervised, though the direct work may be entrusted to a town engineer. In the smaller towns selectmen may decide what relief shall be given to the poor and act as assessors of general property.

Other Officials A visitor to New England is almost always impressed by the number of officials elected even by a small town and the query is often made as to what there is for all of these to do. The truth is that many of them have little or nothing to do, but public office is an honor in a New England rural town which every citizen of any standing hopes to receive at least once during his lifetime. Hence there is a school committee to supervise the schools; overseers of the poor to administer charity; a board of health to promote proper health; cemetery committees to assume the care of burying grounds not otherwise controlled. A town clerk keeps the records of town meetings, births, deaths, and many other matters and is often a full-time officer who holds his position year after year. Fence viewers, poundkeepers, and sealers of weights and measures are among the officials elected by many towns, though there may be little for them to do nowadays. A constable and assistants make arrests and serve summons. If all of these officials received even modest remuneration, the smaller towns would be bankrupt, but except for the clerk and perhaps the selectmen and constable the compensation is entirely confined to honor.

Record of the Town Form The New England town at its best embodies democratic principles in a relatively pure form. The alertness of the citizens, the eagerness to hold public office, and the sharing of responsibility for public affairs are a refreshing contrast to the conditions that prevail in the country as a whole. Hence the town form of government under favorable circumstances deserves a great deal of praise. On the other hand, it has its problems, particularly in those towns which are very small or larger than a few

thousand. In the former the number of people and the scanty resources make it difficult to operate the necessary machinery and in some of the remote plantations of Maine, where only a handful of people still live, there is no organized town government. In the larger places problems are involved; town meetings are impersonal; and local pride is less in evidence. The result is that the record in such places is not good in most cases and it seems preferable to abandon the town form and request municipal status.

TOWNSHIPS

Outside of New England there are numerous states that give some recognition to towns, or "townships" as they are frequently called. But this unit of government tends to be artificial in these states, even if the congressional township of thirty-six square miles is not used. Several states, including New York, New Jersey, Illinois, Wisconsin, Nebraska, Minnesota, Michigan, and the Dakotas, go so far as to retain the town meeting in at least some of their townships. However, comparatively little responsibility is entrusted to such meetings; attendance is ordinarily far from general; and the entire atmosphere is in great contrast to that to be observed in the more vital New England towns. In Ohio, Pennsylvania, Indiana, Iowa, Kansas, and Missouri there are civil townships, as distinct from the congressional townships which are to be found in the western states as geographical units for survey purposes, but the town meeting is not a feature.

Township Officials Townships which have governmental functions to perform are provided with an array of officers, including trustees, clerks, treasurers, assessors, justices of the peace, constables, and advisory boards. Many of these have little or nothing to do and could be dispensed with quite easily; others may be dictators in their small domains. Where assessing is done on the basis of the township, the assessor and his deputies lay the foundations for the entire general property-tax structure throughout a state, though they may do their work in an indifferent fashion. Justices of the peace may have a good deal to do or they may find that their cases amount to but a handful during the course of a year. The township trustee, as recognized by Indiana, is by all odds the most powerful of the various township officers; indeed he violates fundamental principles of the American political system because of his un-

checked authority. Though elected by the township voters, the trustee frequently runs his office with a high hand. In Indiana, for example, he employs the schoolteachers, contracts for school buses, sees that the school facilities are in order, and purchases school supplies. It is proverbial that he performs these functions on the basis of partisanship, personal friendship, and nepotism. Poor relief is placed under his charge, though his record in this field is far from impressive. So great is his authority that he can certify the necessity of borrowing money for this purpose and the county finance officers have to issue the bonds.

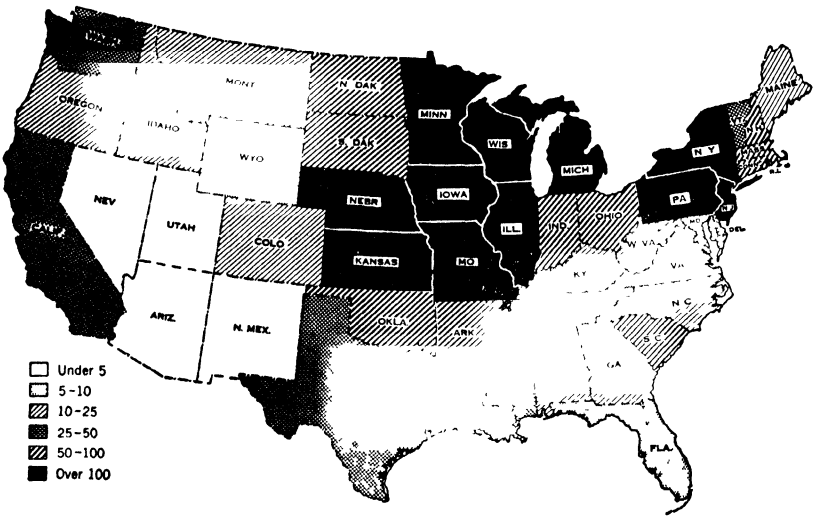
Townships Outmoded Almost without exception those who have investigated township government outside of New England agree that it leaves much to be desired and indeed could probably be abandoned entirely with benefit to the public. Nevertheless, this unit of government is strangely persistent. A few states, including Minnesota, Michigan, and Oklahoma, have made a little progress in consolidating townships or giving their functions to counties, but the opposition of the township officials and their friends together with local pride has been able to prevent any general movement in this direction.

VILLAGES

When rural areas become sufficiently inhabited that they take on some of the urban characteristics, the need frequently arises to make a special governmental provision. These little aggregations of humanity may require sanitary facilities, a water system, street improvements, and other services which are not ordinarily furnished by counties or townships, but they are not populous enough to justify a status as cities. Hence steps are taken to organize a village or borough, as the various states designate these small semiurban units of government. In general, a village may be expected to have a population of a few hundred people, but there is considerable diversity. Villages with less than one hundred inhabitants may be encountered in some states, while at the other extreme stand places such as Oak Park, Illinois, which has more than sixty thousand people. The various states pass laws which regulate village government, laying down minimum population requirements and specifying what steps are necessary to acquire this status. There are at present more than ten thousand incorporated places with populations of

one thousand or less in the United States and more than three thousand which fall into the one thousand to twenty-five hundred population class.[14]

Village Government It is fitting that village government should be comparatively modest in character in the great majority of cases. Occasionally a village will resemble the New England town in that it will be authorized to use a village meeting of voters



Bureau of the Census.

NUMBER OF LOCAL GOVERNMENTS PER 1,000 SQUARE MILES

to transact business, but ordinarily governmental affairs are entrusted to a village board and elective officials. These boards, sometimes known as councils, trustees, or burgesses, resemble a city council, though their authority may be somewhat more limited by state laws than is the case with city councils. But they levy taxes, decide how public funds shall be spent, pass bylaws for the regulation of local conditions, and have general oversight of the affairs of the village. A separate mayor may be provided or the presiding

[14] Some of these latter are cities, while others fall in the category of villages. Under the United States Census definition which fixes the minimum urban population as twenty-five hundred, they are all villages or "other incorporated places."

officer of the council may be the formal head of the village. Clerks, treasurers, marshals, and other officers, usually elective in character, perform the functions which their titles indicate.

OTHER UNITS OF GOVERNMENT

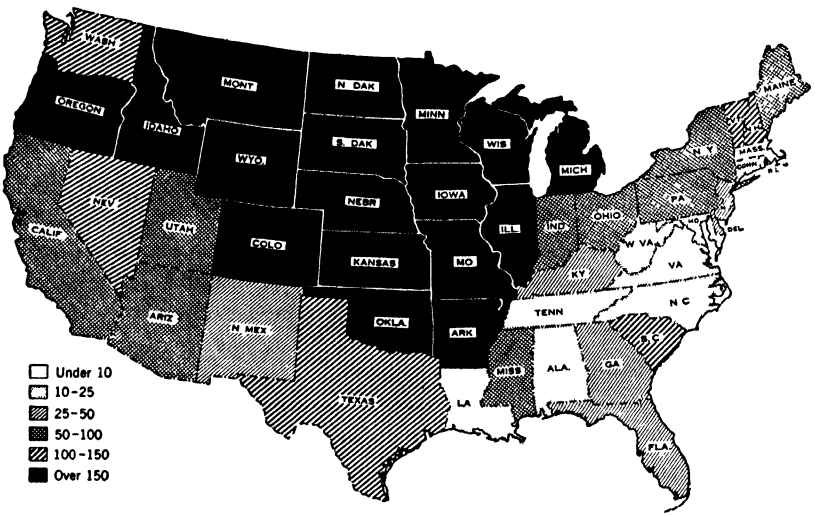
County Divisions in the South and the West Instead of recognizing the town or township, the states of the South and many of those in the West subdivide the county into magisterial districts, precincts, election districts, and so forth. These areas usually have no organized government, but are merely divisions of a county for election purposes, school administration, the organization of justice courts, or road maintenance. The functions performed by towns and townships in New England, the Middle Atlantic states, and the Middle West are taken care of by the counties in these states.

Special Districts Finally we arrive at the jumping-off place as far as governmental units are concerned: the special district, which is rarely in the limelight, yet in numbers exceeds any other unit. Some of these districts cover rural areas; others stretch over both rural and urban areas; while still others are entirely within cities. Altogether they make a pattern which is intricate beyond the comprehension of even well-informed citizens.[15] They exist as a result of various state laws which authorize their creation and define their powers. They are legally independent of cities, counties and other local governments, though they cover the same territory and include the same people and, what is particularly important, tax the same property. They have been set up to handle special functions which for one reason or another a state has not seen fit to entrust to a county or a city. Some of them are very modest in program, spending perhaps no more than a few hundred dollars per year. On the other hand, there are metropolitan water and sanitary districts, which control property valued at millions of dollars.

Various Types of Special Districts There are five general types of special districts which are to be encountered: (1) educational, (2) sanitary, (3) water, (4) public utility, and (5) miscellaneous. Educational districts, commonly designated school districts, usually exist to provide educational facilities for people who live in

[15] For a good discussion of this, see Kirk H. Porter, "A Plague of Special Districts," *National Municipal Review*, Vol. XXII, pp. 544ff., November, 1933.

rural or semiurban areas. In the day of the one-room red schoolhouse there were few of these, but consolidated primary schools and high schools have made it necessary to join all or parts of several townships, villages, and other local units into districts for the support and administration of these schools. In some states there are school districts which cover the same territory as cities, since it is not regarded as desirable to integrate school administration with ordinary municipal government. Sanitary districts are largely con-



Bureau of the Census.

NUMBER OF LOCAL GOVERNMENTS PER 10,000 INHABITANTS

fined to metropolitan areas where there is need to make expensive provision for the disposal of the sewage of a number of cities and villages. Water districts may be set up for the purpose of building reservoirs for the impounding of surface water and constructing distribution mains to carry this water many miles to the cities and villages which require it. Or they may be of the reclamation variety frequently encountered in the semiarid states of the West—California alone has approximately seven hundred of these—where rivers are dammed to store water for irrigation purposes. A third type of water district has as its end the construction and maintenance of levees and dams for flood control. Public utility districts are

more or less self-explanatory; their function is to construct and operate electric generating or distributing systems and other utilities. Finally, there are miscellaneous districts which have charge of parks, forests, highways, and many other services.

Undue Complexity of the System It is doubtful whether there is any other country in the world which maintains as many local units of government as the United States—the total considerably exceeds 150,000. Most of the functions performed by all of these governments are essential, but there is duplication at times and all too frequent inefficiency because the units are too small to carry on their work in a satisfactory manner. Perhaps most serious of all is the fact that many of the special districts have the power to levy taxes, spend money, and incur indebtedness without preference to public opinion or indeed any adequate check. They operate more or less in the twilight because they are so numerous and diverse that the majority of citizens hardly realize that they exist at all. Many of their functions should be placed under the counties, cities, and other regular units of government if responsible administration, efficiency, and economy are desired.

Selected Bibliography

Anderson, William, *The Units of Government in the United States,* rev. ed., Public Administration Service, Chicago, 1942.

Carpenter, W. S., and P. T. Stafford, *State and Local Government in the United States,* F. S. Crofts & Company, New York, 1936, Chap. 3.

Cooper, Weldon, *Municipal Government and Administration in Alabama,* University of Alabama Press, University, 1940.

Gould, John, *New England Town Meetings,* The Stephen Daye Press, Brattleboro, Vt., 1940.

Griffith, E. S., *The Modern Development of City Government in the United Kingdom and the United States,* 2 vols., Oxford University Press, New York, 1927.

——, *History of American City Government,* Oxford University Press, New York, 1938.

Hodges, H. G., *Municipal Management,* F. S. Crofts & Company, New York, 1939.

Jones, Victor, *Metropolitan Government,* University of Chicago Press, Chicago, 1942.

Kneier, C. M., *City Government in the United States,* Harper & Brothers, New York, 1933.

Lancaster, Lane W., *Government in Rural America,* D. Van Nostrand Company, New York, 1937, Chap. 11.

MacCorkle, S. A., *Municipal Administration,* Prentice-Hall, New York, 1942.

—, *American Municipal Government and Administration,* D. C. Heath and Company, Boston, 1948.

Macdonald, A. F., *American City Government and Administration,* rev. ed., The Thomas Y. Crowell Company, New York, 1946.

Martin, R. C., *Urban Local Government in Texas,* University of Texas Press, Austin, 1936.

Morgan, A. E., *The Small Community,* Harper & Brothers, New York, 1942.

Munro, William B., *The Government of American Cities,* rev. ed., The Macmillan Company, New York, 1926.

—, *Municipal Government and Administration,* 2 vols., The Macmillan Company, New York, 1923, Vol. I.

—, *Municipal Administration,* The Macmillan Company, New York, 1934.

Pfiffner, J. M., *Municipal Administration,* The Ronald Press Company, New York, 1940.

Porter, Kirk H., *County and Township Government in the United States,* The Macmillan Company, New York, 1922, Chaps. 2-3, 16-17.

Raisty, L. B., *Municipal Government and Administration in Georgia,* University of Georgia Press, Athens, 1941.

Reed, T. H., *Municipal Government in the United States,* rev. ed., D. Appleton-Century Company, New York, 1934.

—, *Municipal Management,* McGraw-Hill Book Company, New York, 1941.

Rohr, C. J., and others, *Local Government in Massachusetts,* Massachusetts State College, Amherst, 1941.

Satterfield, N. H., and H. W. Urban, *Municipal Government and Administration in Mississippi,* State Planning Commission, Jackson, 1940.

Sly, John F., *Town Government in Massachusetts,* Harvard University Press, Cambridge, 1930.

Smith, H. C., *Rural Local Government in Ohio,* School and College Service, Columbus, 1940.

Snider, C. F., *County and Township Government in Indiana*, University of Illinois Press, Urbana, 1936.

Stone, H. A., Don Price, and Kathryn Stone, *City Manager Government in the United States*, Public Administration Service, Chicago, 1940.

Upson, L. D., *The Practice of Municipal Administration*, D. Appleton-Century Company, New York, 1926.

Wells, Roger H., *American Local Government*, McGraw-Hill Book Company, New York, 1939.

Zink, Harold, *Government of Cities in the United States*, rev. ed., The Macmillan Company, New York, 1948.

Appendix · *Constitution of the United States*

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes [1] shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.[2] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representa-

[1] See the Sixteenth Amendment.

[2] Partly superseded by the Fourteenth Amendment.

tives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. 1. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof,[3] for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualifications to hold and enjoy

[3] See the Seventeenth Amendment.

any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor at any other place than that in which the two Houses shall be sitting.

Section 6. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no

person holding any office under the United States shall be a member of either House during his continuance in office.

Section 7. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. 1. The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.[4]

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section 10. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

[4] See the Sixteenth Amendment.

ARTICLE II

Section 1. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[5] The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.[6]

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

[5] The following paragraph was in force only from 1788 to 1803.
[6] Superseded by the Twelfth Amendment.

4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.[7]

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior

[7] See the Twentieth Amendment.

officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. 1. He shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a state and citizens of another State;[8]—between citizens of different States,—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and

[8] See the Eleventh Amendment.

consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

ARTICLE IV

Section 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed

by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the

members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

[Names omitted]

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

ARTICLE I [9]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

[9] The first ten amendments adopted in 1791.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI [10]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII [11]

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall

[10] Adopted in 1798.
[11] Adopted in 1804

consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII [12]

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV [13]

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the

[12] Adopted in 1865.
[13] Adopted in 1868.

members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV [14]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI [15]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment

[14] Adopted in 1870.

[15] Passed in 1909; proclaimed 1913.

among the several States, and without regard to any census or enumeration.

ARTICLE XVII [16]

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII [Repealed by 21st Amendment] [17]

After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the states by Congress.

ARTICLE XIX [18]

The right of citizens of the United States to vote shall not be

[16] Passed 1912, in lieu of paragraph one, section 3, Article I, of the Constitution and so much of paragraph two of the same section as relates to the filling of vacancies; proclaimed 1913.

[17] Submitted by Congress, December, 1917; proclaimed January, 1919.

[18] Proposed in 1919, adopted in 1920.

denied or abridged by the United States or by any State on account of sex.

The Congress shall have power to appropriate legislation to enforce the provisions of this article.

ARTICLE XX [19]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

[19] Proposed in 1932, adopted in 1933.

ARTICLE XXI [20]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

[20] Proposed in February, 1933, and received the approval of the requisite three fourths of the states, by November, 1933.

Index

A

Absentee voting, 172-173
Absolute monarchy, as a form of government, 3
Administration (federal), responsibility of the President for, 236-238
  general problem of, 395
  expansion of, 395-397
  causes of enlarged role of, 397-398
  legal basis for, 398
  haphazard character of growth of, 399-400
  general forms of, 400-404
  authority of administrative agencies, 404-406
  administrative reorganization, 406-412
  public personnel, 415-432
  financial, 434-453
Administration (state), development of, 671-676
  reorganization of, 676-678
  types of agency in, 680-682
  public personnel, 683-686
  keeping of records, 686
  planning, 686-688
  central purchasing, 688
  specific services, 688-698
  financial, 701-722
Administrative Office of United States Courts, 377-378
Administrative reorganization, 406-412
Admiralty law, 373
Admission of new states, 43-45
Advisory functions of federal administrative agencies, 405
Agricultural activities of the federal government, general character of, 487
Agricultural activities—*Continued*
  organization for, 487
  agricultural production, 488-492
  marketing and distribution, 492
  rural life, 493
  credit facilities, 493-495
Agricultural activities of the state governments, 698
Agricultural Adjustment Act of 1933, 491
Agricultural Research Administration, 488-489, 491
Agricultural subsidies, 492
Agriculture, Department of, 487-495
Air Force, Department of, 559-561
Alaska, 45, 729-730
Alexandria Conference, 19
Aliens, status of, 66
  registration of, 66-67
  regulation of immigration of, 67-69
  deportation of, 69
Ambassadors, status of, 546
Amending process of state constitutions, 584-587
Amendments to the federal Constitution, amending process, 28-29
  contents of, 31-35
American Institute of Public Opinion, 197-198
Amnesties, 246
Animal Industry, Bureau of, 490
Annapolis Conference, 19
Annuity bonds, 716-717
Antifederalist party, 110-111
Antitrust activities of the federal government, 392, 468
Antitrust Division of the Department of Justice, 392, 468
Appellate courts (state), 653-654
Appellate jurisdiction of Supreme Court, 389

Appointments, power of the President over, scope of, 240-241
actual exercise of, 241-242
role of the Senate in, 242-243, 326-327
Appointments, power of state governnors over, 597-600
Apportionment of seats in the House of Representatives, 288
Apportionment of seats in state legislatures, 619
Apportionment requirement in federal civil service, 426-427
Arbitration tribunals, 668
Argentina, government of, 10
Aristocratic form of government, 5-6
Arms, right to keep and bear, 77
Army, Regular, 559
Reserve officers, 559
National Guard, 559
Selective Service, 560
National Army, 560-561
Department of, 561
Articles of Confederation, 17-18
Assembled civil service examinations, 423
Assembly, right of, 76-77
Assessment of property, 703-704
Atomic Energy Commission, 562-563
Attainder, bills of, 79-80
Attorney General of the United States, 390-392
Auditing, 719, 721
Australia, government of, 10

B

Bail, 85
Ballots, forms of, 170-171
Banking system (federal), Federal Reserve Banks, 456-458
National Banks, 458
federal insurance of deposits, 458
Reconstruction Finance Corporation, 459
Federal Housing Administration, 460
Federal Home Loan Building Administration, 460-461
Bretton Woods Agreement, 461
Export-Import Bank, 461
agricultural credit, 493-495
Banking systems (state), 696
Bankruptcy, 373-374
Bicameral system, in Congress, 286-287
in the state legislatures, 615-618
Bill drafting, in Congress, 345
in the state legislatures, 632-633
Bill of Rights, in federal Constitution, 31, 71-91
in state constitutions, 581
Bills, types of, 342-343
drafting of, in Congress, 343-345
number of, in Congress, 345-346
introduction of, in Congress, 346-347
committee stage in Congress, 347-351
on the floor of Congress, 355-360
conference committees on, in Congress, 360
sent to President, 360-361
in state legislatures, 634-643
Biparty system, 112, 126-127
Blind pensions, 528
Board type of administrative organization, in the national government, 403
in the states, 680-681
Bonds, federal, 449
state, 716-717
Borrowing, federal, 449
state, 713-717
Bosses, political, 153-154
Brazil, government of, 10
Bretton Woods Agreement, 461
British constitution, compared with Constitution of United States, 30-31
Budget, Bureau of the, 231, 276, 450
Budgets, of the federal government, 447, 449, 453
of the states, 709-710
Business, regulation of, by the federal government, 465-468, 472-484
by the states, 696-697

C

Cabinet, the President's, development of, 254-257
composition of, 257-260
meetings, 260-262
role of, 261-262

Cabinet, the President's—*Continued*
activities of members of, 263-264
suggested changes in, 264-267
Cabinet type of government, 269-270
Calendars, legislative, 355-356
California, organization chart of, 679
California plan of selecting judges, 656
Canada, government of, 10
Capitol Building in Washington, 341-342
Career service, 546-547
Caucus system, in Congress, 351-354
in the state legislatures, 629-630
Census Bureau, 469, 471
Central Intelligence Agency, 558
Central purchasing, 688
Charities and corrections in the states, 695
Checks and balances, 11-12
Child welfare program, 527-528, 529
Children's Bureau, 512, 528
Claims, federal Court of, 378-379
Cities, place of, in the United States, 752
legal basis of, 752-753
mayor-council type of government in, 754-757
council-manager type of government in, 757-761
commission type of government in, 761-762
Citizens' Organizations, 203-204
Citizenship, importance of, in the United States, 58
definition of, 58-59
acquisition of, 59-64
naturalization, 60-64
loss of, 64-65
marriage and, 65-66
City central committees, 136-137
City chairmen, 136-137
Civil Aeronautics Administration, 479
Civil Aeronautics Board, 479
Civil cases, in federal courts, 370-374
in state courts, 664-666
Civil service, see Public personnel administration
Civil Service Commission, 417-420
Civilian defense, 573
Civilian Production Administration, 569
Classification in public personnel administration, 427
Classified service, see Public personnel administration
Clayton Act of 1914, 468
"Closed" primaries, 162
Closure rule of Senate, 357
Coast and Geodetic Survey, 469
Coast Guard, 478-479
Commerce, Bureau of Foreign and Domestic, 469
Commerce clause of the Constitution, 46
Commerce, Department of, 468-472
Commerce, interstate, regulation of, 465-482
Commission on Organization of the Executive Branch, 412
Commissions on interstate co-operation, 55-56
Commission type of city government, 761-762
Committee chairmen, in Congress, 307-308
Committee of the whole, in Congress, 305-306
Committee on Administrative Management, President's, 408-409
Committee on Rules of the House of Representatives, 301, 354
Committee on Ways and Means of the House of Representatives, 348
Committee system, of the House of Representatives, 304-308
of the Senate, 319-322
of state legislatures, 630-631
Commodity Credit Corporation, 492
Common law, 371-372, 659
Communications, regulation of, 480
Communist party in the United States, 112-113
Compacts between states, 55
Comptroller General of the United States, 442
Compulsory voting, 103-104
Conciliation Service, 512-513
Concurrent power, 337
Concurrent resolutions, 343
Confederation, The, 17-18
Conference committees, of Congress, 305-306, 360
of state legislatures, 642

Conferences, party, in Congress, 351-354
Confirmation of appointments by the Senate, 327
Congress of the United States, relations with the President, 271-284
House of Representatives, 286-308
Senate, 310-322
general view of powers of, 324-339
making of laws, 341-364
Congressional campaign committees, 144-145
Congressional Directory, 362
Congressional elections, 293-294
Congressional expansion of the federal Constitution, 38-39
Congressional publications, 361-362
Congressional Record, 361-362
Conservation, 499-507, 698
Constitution of 1787, framing of, 19-23
economic influences in, 20
ratification of, 23-24
contents of, 27-28
amendments to, 28-35
judicial interpretation of, 35-38
congressional expansion of, 38-39
role of custom and usage in development of, 39-40
Constitutional system of the United States, 26-40
Constitutions (state), diversity among, 579-580
similarity of, 580
compared with the federal Constitution, 580-581
contents of, 581-583
amending of, 583, 584-587
Model State Constitution, 584
the courts and, 587-588
Consular functions of the Foreign Service, 549-550
Contiguous territory, requirement of, 292-293
Contract clause of the federal Constitution, 47-48
Convention of 1787, 19-23
Conventions of political parties, state, 140-141
national, 145-152
Copyrights, 483
Coroner, office of, in counties, 749
Corporate income taxes, 440-441
Corporations, government owned, 483-484
Correctional institutions of states, 695
Corrupt practices legislation, 174-176
Council-manager type of government, in counties, 749
in cities, 757-761
Council of Economic Advisers, 499
Council of Personnel Administration, 420
Council of State Governments, 55
Councils, city, 756-757
Counsel, right of, 83-84
Counties, nature of, 740-742
functions of, 742-744
county seats, 744
boards of, 744-745
officials of, 746-749
County boards, 744-745
County chairmen, 137
County committees of political parties, 137-138
Court Reorganization Bill of 1937, 383
Courts (federal), district, 375-376
circuit courts of appeals, 376
special, 378-379
Supreme, 379-390
Courts (state), justice of the peace, 649-651
magistrate, 651-652
municipal, 652
intermediate, 652-653
appellate, 653-654
supreme, 654
special, 654
judges, 655-658
law applied by, 658-660
procedure, 660-666
current problems, 666-669
Credit, see Banking system (federal)
Criminal cases, in federal courts, 374-375
in state courts, 661-664
Criminal law, 659-660
Criminal procedure, in federal courts, 374-375
in state courts, 661-664
Cruel and unusual punishment, 85-86

Currency, varieties used in the United States, 453-454
Custom and usage, as means of effecting constitutional expansion, 39-40
Customs and Patent Appeals Court, 379
Customs Court, 379
Customs receipts, 441
Customs Service, 442

D

Dairy Industry, Bureau of, 490
Dartmouth College case, 47-48
Debate, in Congress, 356-358
in state legislatures, 640
Debts, national, 447-449
state, 713-717
Declaration of Independence, 17
Declaration of intention in naturalization proceedings, 62
Declaratory judgments, 668
Defense, see National defense
Defense Plant Corporation, 459
Delegates to national conventions of political parties, 145-147
Demagogues, 201
Democratic form of government, nature of, 6-7
attacks on, 7-8
current status of, 8-9
pros and cons of, 9
Democratic National Convention, 146
Democratic party, 111-112
Deportation, 69
Dictatorship as a form of government, 4-5
Diplomatic functions of foreign service officers, 547-549
Direct election of Senators, 312-313
Direct legislation, nature of, 643-645
initiative, 645-646
popular referendum, 646-647
use of, 647
Direct primaries, see Primaries
Direct taxes, 436-437
"Dirty-hands" attitude toward politics and government, 93-94
Discharge of congressional committees, 351
Disciplinary action in federal employment, 430
District courts, see Federal district courts
Districts, congressional, 138, 290-293
District of Columbia Courts, 379
Divorce and the "full-faith-and-credit" clause, 54
Documents, House and Senate, 362
Double jeopardy, 83
Dual citizenship, 65-66
Due process clause of Fourteenth Amendment, 86-87
Due process of law, nature of, 86-87
procedural, 87-88
substantive, 88-89, 91

E

Economic Warfare Board, 570-571
Economy in government, problem of, 446-447
Education, state programs of, 688-691
Education, United States Office of, 530-531
Eighteenth Amendment, 33
Elections, time of holding, 167
organization for, 167-170
types of ballots used in, 170-171
voting machines, 171-172
absentee voting, 172-173
contested, 173
frauds in, 173-174
reform of, 174-178
recall, 178-180
Electoral college, 213-214
Electoral Count Act of 1887, 216
Electoral votes, 213-215
Eleventh Amendment, 31
Eligible lists, 425
Elite, government by the, 6
Emergency Powers, 336
Emergency Price Control Act of 1942, 570
Eminent domain, 90-91
Employee organizations in the federal civil service, 431-432
Employment Service, United States, 527
Employment taxes, 441
Engraving and Printing, Bureau of, 454

Entomology and Plant Quarantine, Bureau of, 490-491
Enumerated powers of the national government, 13
Equal protection of the laws, guarantee of, 78-79
Equal representation of states in the Senate, 310-312
Equality of states, 44-45
Equity, 372-373, 659
Erosion control, 489-490
Estate taxes, 706
Estimates, budgetary, 450-452
Examinations in the federal public personnel system, 422-425
Excise taxes, 441
Exclusive powers of Congress, 337
Executive agreements, 249
Executive committees of national committees of political parties, 142-143
Executive-legislative relationships, 270-271
Executive Office of the President, 231-234
Executive orders, 238-239
Expenditures of the national government, 443-447
of the states, 707-713
Export-Import Bank, 461
Export taxes, prohibition on, 436
Ex post facto laws, 80
Extradition, 54

F

Fair trial, guarantee of, 87-88
Farm Credit Administration, 493-494
Farmers Home Administration, 494
Federal aid, see Grants-in-aid
Federal Bureau of Investigation, 11
Federal Communications Commission, 480
Federal courts, jurisdiction of, 367-370
work of, 370-375
district, 375-376
circuit courts of appeals, 376
special, 378-379
Supreme, 379-390
Federal Deposit Insurance Corporation, 458
Federal district attorneys, 392
Federal district courts, 375-376
Federal Farm Mortgage Corporation, 494
Federal Home Loan Bank Administration, 460-461
Federal Housing Administration, 460, 534
Federal marshals, 392
Federal Mediation and Conciliation Service, 513
Federal Power Commission, 480, 482
Federal Register, 239 n
Federal Reserve Banks, 455-458
Federal Reserve Board, 456-457
Federal Savings and Loan Insurance Corporation, 460-461
Federal Security Agency, 400
Federal Trade Commission, 472-473
Federal type of government, 9-10
Federal Works Agency, 400, 401
Federalist, 24
Federalist party, 110, 111
Fifteenth Amendment, 32-33
Filibustering in the Senate, 358
Final papers in naturalization process, 63-64
Finance, public (federal), revenues, 434-441
expenditures, 443-447
debt, 447-449
budgetary system, 449-453
Finance, public (state), revenues, 701-707
expenditures, 707-713
debt, 713-717
care of state funds, 717-721
state control over local finances, 721-722
Finances of political parties, problem of, 155
source of funds, 155-156
expenditures, 156-157
Hatch Act restrictions on, 156-157
Fish and Wildlife Service, 504
Five-to-four decisions of the Supreme Court, 387
Foreign Economic Administration, 571
Foreign relations, power of President relating to, 247-249
foreign policy summarized, 537-541

Foreign relations—*Continued*
role of State Department in, 541-543
role of the Foreign Service in, 544-552
Foreign Service Act of 1946, 544
Foreign Service, history of, 544
scope of, 544-547
relation of ambassadors and ministers to, 544-546
diplomatic functions of, 547-549
consular functions of, 549-550
evaluation of, 550-551
Forest Service, 501-502
Forests, national, 501-502
Forms of government, 2-13
Fourteenth Amendment, 32-33
Franking privilege, 295-296
Frauds, election, 173-174
Freedom of the press, 75-76
Freedom of religion, 76
Freedom of speech, 75-76
"Full-faith-and-credit" clause, 53-54

G

Gallup Polls, 197-198
Gasoline taxes, 706
General Accounting Office, 443, 450
General property taxes, 703-705
General welfare clause of the federal Constitution, 335-336
Geographical representation in the Cabinet, 259-260
Georgia, organization chart of, 672-673
Gerrymandering, 291-293
G.I. Bill of Rights, 563
"Gimme" concept of government, 95
G-men, 52
"Good Neighbor" policy, 538
Governmental functions of administrative agencies, 404-405
Government-a-necessary-evil, concept of, 94-95
Governors (state), nature of their office, 590-591
nomination and election of, 591-592
term of, 592
salaries of, 592-593
removal of, 593-594
Governors (state)—*Continued*
political importance of, 594
functions of, 594-613
Grand juries, 662-663
Grants-in-aid, federal, 49-50, 707
Great Britain, government of, 269-270

H

Habeas corpus, writ of, 82-83
Hare type of proportional representation, 620
Hatch Act, 156-157
Hawaii, 45, 728-729
Hayes-Tilden dispute, 218
Health activities, of the states, 693, 695
Health Service, United States Public, 529-530
Hemisphere security, 538
Home Loan Bank Board, 534
Home Owners' Loan Corporation, 460-461
House of Representatives (national), composition of, 287-296
organization of, 297-304
committee system of, 305-308
Housing activities, of the national government, 531-534
of the states, 693
Humphrey case, 244

I

Illinois, administrative reorganization described, 676
Immigration, regulation of, 67
Acts of 1921 and 1924, 67-68
National Origins Act, 68-69
Immigration Service, 69
Immigration and Naturalization, Bureau of, 63, 65, 69
Immigration Service, 69
Impeachment, process of, in the national government, 328-330
in the states, 593
Imperialism, record of, in the United States, 725-726
Implied powers, 14, 334
Income taxes, federal, 436-437, 440
state, 705-706
Incorporated territories, 727

Independent establishments, 403
Independents, political, 125-126
Indian Affairs, Bureau of, 507
Indictments, grand jury, 662-663
Indifference toward government, problem of, 100-101
Information, process of, 662-663
Inherent powers controversy, 334-335
Inheritance taxes, state, 706
Initiative, constitutional, 645
statutory, 645
Injunctions, 373
In-service training, 431
Institutions, state, administration of, 695
Insurance of bank deposits, 458
Insurance, state regulation of, 696
Intangibles, taxation of, 704-705
Interior, Department of the, 500, 501
Internal revenue, 440-441
Internal Revenue, Bureau of, 442
Interstate Commerce Commission, 476-477
Interstate compacts, 55
Investigatory activities of Congress, 326
Involuntary servitude, problem of, 73-74
Isolation, policy of, in the United States, 537-538
Issues, role of political parties in presenting, 116-119
Itemic veto, proposal to confer on President, 280-281
power of state governors, 610-611
Ius sanguinis, 60
Ius soli, 59-60

J

Jefferson's *Manual*, 300
Joint Chiefs of Staff, 557, 558
Joint Committee on Organization of Congress, 1946 Report of, 308, 362-363
Joint committees in Congress, 305-306
in state legislatures, 630-631
Joint resolutions, 343
Journals, legislative, 361-362
Judges, see Courts
Judicial council, federal, 377
Judicial councils of the states, 654-655
Judicial interpretation of the federal Constitution, 35-38
Judicial process, rights relating to the, 81-89
Judicial review, doctrine of, 35-37
Judiciary, see Courts
Judiciary Act of 1789, 36
Juries, 85, 106, 662-663
Just compensation, 90-91
Justice, Department of, organization of, 390-392
Attorney General, 390-392
Solicitor General, 392
Antitrust Division, 392, 468
Federal Bureau of Investigation, 392
Justices of the Peace, 650-651

K

Keynote address at national conventions, 147
Knight, E. C., case, 465

L

Labor and the courts, 516-517
Labor, Department of, 510-513
Labor, relations of, with the national government, 510-519
Labor Standards, Division of, 512
Labor Statistics, Bureau of, 511-512
"Lame Duck" Amendment, 33-34
Law departments of state governments, 688
Law-making, steps in, by Congress, 341-364
by the state legislatures, 634-643
Leaders, political, 153-154, 250-251
Legal aid, 667
Legislative councils, 631-632
Legislative reference bureaus, congressional, 363, 364
state, 632-633
Legislatures, state, bicameral versus unicameral, 615-618
composition of, 618-625
sessions of, 626-628
organization of, 628-633
rules of, 633-634
steps in making of laws by, 634-643
Lend-Lease Administration, 571

Library of Congress, 363, 364
Lieutenant governors, 613
Limitations, imposed upon, the federal government, 14-15
the states, 46-48
Limited monarchy, 3-4
List type of proportional representation, 620
Little Presidents, 233-234
Lobbies, regulation of, 193-194
Lobbying in Congress, 359-360
Lobbyists, 187-188
Local government, see County, City, Town, Township, Village government
Loss of citizenship, 64-65

M

Machines, political, 154
McCulloch v. *Maryland,* case of, 14
Magistrate courts, 651-652
Managerial functions of administrative agencies, 405
Managers, city, 759-760
Mandamus, writ of, 373
Mandatory powers of Congress, 336-337
Marbury v. *Madison,* case of, 35-36
Marine Corps, 562
Maritime Commission, United States, 477-478
Marketing and distribution of agricultural products, problem of, 492
Marriage and citizenship, 65-66
Marshall, John, as Chief Justice of the Supreme Court, 380-381
Martial law, 565-566
Mayors of cities, 754-755
Merchant marine, 478
Merchant Marine Act of 1936, 478
Merit system, see Public personnel administration
Messages, of Presidents to Congress, 273-275
of governors to state legislatures, 606-607
Metals Reserve Corporation, 459
Military affairs, power of President relating to, 249-250
functions of governors relating to, 611-612
Military government, 566
Military law, 565
Ministers, status of, in diplomatic service, 546
Minor political parties, 112-113
Minority Presidents, 217
Mints, 454, 456
Mobilization for war, 567-576
Model state constitution, 584
Monarchical form of government, 3-5
Monetary system, 453-456
Monopolies, regulation of, 392, 468
Monroe Doctrine, 538
Moses-Linthicum Act of 1931, 544
Multiple-party system, 126-127
Municipal courts, 652
Munitions Board, 558
Myers case, 244

N

National banks, 458
National capital, administration of, 735-738
National chairmen of political parties, 142-143
National committees of political parties, 142-143
National conventions of political parties, 145-152
National defense, general problem of, 554-555
past record of, 555-557
National Military Establishment, 557-559
Army, 559-561
Air Force, 559-561
Navy, 561-562
current problems of, 562-563
military and martial law and military government, 565-566
mobilization and reconversion, 567-576
National Defense Secretary, 558
National Guard, 559-560
National headquarters of political parties, 144
National Housing Agency, 534
National Housing and Home Finance Agency, 400, 534
National Labor Relations Board, 513-515

National Mediation Board, 515-516
National Military Establishment, 412, 557-559
National organizations of political parties,
National Origins Act, 68-69
National Railroad Adjustment Board, 516
National Resources Planning Board, 498-499
National Security Council, 558
National Security Resources Board, 558
National War Labor Board, 516
Naturalization, by treaty, 6
by congressional action, 61
by judicial process, 61-64
cancellation of, 64-65
Navy, 561-562
Navy Department, 561-562
Nebraska, experience with a unicameral legislature, 617-618
Negroes, political status of, 32-33
Newberry case, 159
New England towns, 762-766
New Jersey Plan, 21-22
New River case, 482, 504
Nineteenth Amendment, 33-34
Nominating speeches at national conventions, 150-151
Nominations, role of political parties in, 113-116, 150-152
convention method, 159-161
direct primary method, 161-163
by petition, 163-164
Nonpartisan elections, 123-124
Nonpartisan primaries, 162
Nonvoting, problem of, 102-105
Norris-La Guardia Act of 1932, 517, 519

O

Obligations of citizenship, 92-106
Observance of laws, obligation of, 92-93
Office for Emergency Management, 568
Office of Civilian Defense, 573
Office of Defense Transportation, 572-573
Office of Economic Stabilization, 575
Office of Price Administration, 569-570
Office of Production Management, 568-569
Office of Scientific Research and Development, 574
Office of Strategic Services, 573
Office of War Information, 574-575
Office of War Mobilization and Reconversion, 575-576
Officeholding, privilege and obligation of, 105-106
Oil control, 503
"Okie" case, 76-77
Old-age and survivors insurance, 523-524
Old-age assistance, 522-523
Old-age security, 520-524
Oligarchical form of government, 5-6
"Open" primaries, 161-162
Opinions of Supreme Court, 388
Oral interviews in public personnel administration, 426
Ordinance power of the President, see Executive orders
Original jurisdiction of the Supreme Court, 388-389

P

Pardon power, of the President, 245-246
of state governors, 605
Parliamentary type of government, 269-270
Parties, political, see Political parties
Passport Division of State Department, 543
Passports, 543
Patent Office, 471-472
Patronage, 282, 608
Periodic registration of voters, 165
Permanent registration of voters, 165-166
Permissive powers of Congress, 336-337
Personal rights and liberties, 73-81
Personal service contracts, 74-75
Petition for citizenship in naturalization process, 62-63
Petition, nomination by, 163-164

Petition, right of, 76-77
Philippine Commonwealth, 733-735
Pivotal states, 219
Planning, public, by the federal government, 495-499
by the states, 686-688
Platforms, national political party, 149-150
Pocket vetoes, 278-279
Police courts, 651-652
Police forces, state, 697-698
Police power, 338
Political leaders, 200-201
Political parties, rise of, 109-113
functions of, 113-124
membership in, 124-126
organization of, 130-157
Pollock v. *Farmers Loan and Trust Company*, case of, 33
Popular election of Senators, 312-313
Postal service, 482-583
Postaudit, 721
Post Office Department, 481, 482-483
Preaudit, 719, 720
Precedent, principle of, 37
Precinct captain, 131-136
Precinct committeeman, 131-136
Precincts, 131
Preferential voting, 178
President of the United States, office of, 208-211
election of, 212-218
background of, 219-223
compared with foreign executives, 223
qualifications, 223-224
term, 224-225
financial allowances, 225-226
immunities, 226
social status, 226-227
power and duties, 231-250
as a national leader, 250-251
and his Cabinet, 254-267
and Congress, 269-284
President pro tempore of the Senate, 319
Presidential government, 270-271
Presidential primaries, 212-213
Presidential Succession Acts of 1792, 1886, and 1947, 218
Press agencies of government departments, 96-97
Press conferences of the President, 232-233
Pressure groups, nature of, 182-183
role of, 183-184
relation to political parties, 184
classification of, 184-185
general influence of, 186-187
techniques, 187-191
national, 191-192
state and local, 192-193
regulation of, 193-194
Prestige of public employment and office, in the United States, 420-422
in England, 421
Pretrial procedure in federal courts, 376
Price control, 569-570
Primaries, direct, "open" type, 161-162
"closed" type, 162
nonpartisan type, 162
record of, 162-163
Printing of bills, 347
Prisons, 695
Private bills, 346
Procedural due process, 87-88
Promotional examinations, 429
Promotions, problem of, in public employment, 428-429
Propaganda, 201-202
Property ownership, right of, 89
Property rights, 89-91
Proportional representation, 178, 619-620
Prosecuting attorneys, 747
Provisional appointments in the public service, 426
Public administration, see Administration
Public health activities, of states, 693-695
Public hearings, by congressional committees, 349-350
by legislative committees of states, 638
Public Housing Administration, 534
Public opinion, definition of, 194-196
role of, in public affairs, 196
expression of, 196-199
control and focusing of, 199-205
Public opinion polls, 197-198

Public personnel administration (federal), the spoils system, 415-417
rise of the merit system, 417
Civil Service Commission, 417-420
Decentralization Order of 1945, 420
recruiting, 420-422
examinations, 422-425
appointments, 425-427
classification, promotions, and retirement, 427-430
miscellaneous problems, 430-432
Public personnel administration (state), growth of, 683-684
role of merit principle in, 684-685
machinery, 685-686
Public-purpose clause, 435
Public relations of government agencies, 232
Public schools, see Education
Public utilities, regulation of, by states, 697
Public Utility Act of 1935, 482
Public welfare programs, of states, 691-693
Puerto Rico, 730-732
Pure food and drugs legislation, 492-493

Q

Quasi-judicial functions of federal administrative agencies, 405-406
Quasi-legislative functions of federal agencies, 405-406
Quotas, immigration, 67-69

R

Racial background as a factor in determining political party affiliation, 125
Radio broadcasting of national convention proceedings, problem of, 149
Radio, use of, as a pressure device, 189
Rallies, political, 121-122
Ramspeck Act of 1940, 417
Rationing, 570
Recall elections, 179-180
Reciprocal trade agreements, 542-543
Reclamation, 502-503
Recognition of foreign governments, 248
Reconstruction Finance Corporation, 459
Reconversion, problem of, 575-576
Recruiting for the public service, process of, 420-422
Referendum, popular, 646-647
Reforestation, 501-502
Reform organizations, 202-204
Reformers, political, 202-203
Registration of aliens, 66-67
Registration of voters, purpose of, 164-165
periodic, 165
permanent, 165-166
essentials of an adequate system of, 166-167
Regular Army, 559
Regulation of business enterprises, 465-468, 472-484, 696-697
Regulation of property use, 90
Regulation of transportation, transmission, and communications, 474-482
Regulative taxes, 440
Relief, public poor, 693
Removal of cases to the federal courts, 370
Removal power, of the President, 244-245
of state governors, 600
Removals, process of, in federal civil service, 430-431
Rendition, see Extradition
Reorganization Act of 1945, 411-412
Reorganization, administrative, in the national government, 406-412
in state governments, 676-682
Reorganization Bill of 1939, 409
Reorganization of Congress, 362-364
Reorganization plans of 1939-1940, 409-410
Reporting, governmental, 96-97
Reporting of bills, 356
Representative democracy, 7
Representatives-at-large, 291
Reprieves, 245-246
Republican form of government, 52-53
Republican party, 111-112
Reserve Army officers, 559
Retirement system for civil servants, 429-430

Revenues, of the federal government, 434-441
of the state governments, 701-707
Revolution of 1910-1911 in the House of Representatives, 302-303
Rights of citizens, scope of, 71
source of, 71-72
dual basis of, 72-73
personal, 73-81
relating to the judicial process, 81-89
property, 89-91
Rings, political, 154
Roads, public, federal-aid highways, 698
Rogers Act of 1924, 544
Roll-call voting, in Congress, 358-359
in state legislatures, 641
Roosevelt, Franklin D., as a national leader, 251-252
experiments with the Cabinet, 256
Rubber Reserve Corporation, 459
Rules of the House of Representatives, 299-301
of the Senate, 318-319
of state legislatures, 633-634
Rural Electrification Administration, 493

S

Sales taxes, federal, 441
state, 706
Schechter case, 465
Search warrants, 77-78
Searches and seizures, freedom from unreasonable, 77-78
Second reading of bills, 356, 358
Secretary of State (federal), see State Department
Secretary of state's office in the states, 686
Securities and Exchange Commission, 402, 473-474
Securities, regulation of sale of, by the states, 697
Selective service system, 560
Self-incrimination, freedom from, guaranteed, 84
Senate of the United States, composition of, 310-317
organization of, 317-319
committee system of, 319-322
Senatorial campaign committees, 144-145
Senatorial courtesy, 242-243
Seniority rule, operation of, in Congress, 308, 362-363
Separation of powers, 11-12
Serial bonds, 716-717
Service in armed forces, obligation of, 98
Service ratings, 429
Sessions of Congress, 272-273
Seventeenth Amendment, 33
Sheriff, office of county, 746-747
Sherman Act of 1890, 468
Short-answer type of civil service examination, 422-423
Short ballot, 176-177
Sick leaves, 430
Single-head type of administrative agency, 403, 680
Single-party system, 127-128
Sinking-fund bonds, 716
Sixteenth Amendment, 33
Slavery, prohibition of, 73-74
Small claims courts, 667
Social Security Act of 1935, 520
Social security program, 519-531
Social security taxes, 441, 707
Socialist party, 112-113
Soil Conservation and Domestic Allotment Act of 1936, 491, 504
Soil Conservation Service, 489-490
Soil Erosion Act of 1935, 491
Solicitor General of the United States, 392
Speaker of the House of Representatives, office of, 301-304
revolution of 1910-1911, 302-303
current functions of, 303-304
Speakers of state legislatures, 629
Special districts, problem of, 769-771
Special sessions, of Congress, 273
of state legislatures, 609
Speedy trial, guarantee of, 81-82
Split sessions of state legislatures, 627-628
Spoils system, essentials of, 154-155, 415-416
in federal employment, 416-417
in the states, 599-600
Springer case, 33

Standards, National Bureau of, 471
Standing committees, of the House of Representatives, 306-308
of the Senate, 320-322
of state legislatures, 630
State chairmen of political parties, 139
State committees of political parties, 139-140
State conventions of political parties, 140-141
State Department, history of, 541
organization of, 541-542
geographical subdivisions, 542
commercial subdivisions, 542-543
miscellaneous divisions, 543-544
Foreign Service, 544-552
State headquarters and organization of political parties, 139-140
State universities, organization and programs of, 690-691
Statelessness, 65-66
States' rights debate, 42
Statutes at Large of the United States, 361
Steering committees in Congress, 353-354
Substantive due process, 88-89, 91
Suffrage, 101-105
Supremacy of national government, discussed, 14
Supreme Court (federal), history of, 380-384
organization of, 384-388
work of, 388-390
Supreme Court building, 384-385
Supreme courts of the states, 654

T

Taft-Hartley Act, 515
Tammany Hall, 154
Taney, Roger B., as Chief Justice of the Supreme Court, 381-382
Tariff legislation, 467
Tax Court of the United States, 379
Tax evasion, problem of, 98-99
Tax limitations, 45-46, 434-440
Taxing power, of the national government, 434-440
of the states, 702-707
Tennessee Valley Authority, 504-507
Territories, Division of, 728
Territories, history of, 725-726
types of, 726-728
central administration of, 728
Hawaii, 728-729
Alaska, 729-730
Puerto Rico, 730-732
minor, 732-733
Third degree, 84, 85
Third reading of bills, 358
Third-term tradition, 224-225
Thirteenth Amendment, 32
Three Fifths Compromise, 22
Tolerance, obligation of, 100-101
Town meetings, 763-764
Towns, government of, 766-767
Townships, 766-767
Transmission, regulation of, 480-482
Transportation, regulation of, 474-479
Treason, definition of, 80-81
Treasury Department (federal), 399, 441-442
Treaties, negotiation of, 248
ratification of, 331-334
number of, 332
criticisms of ratifying process, 333-334
Treaty power of the Senate, 331-334
Tweed Ring, 154
Twelfth Amendment, 31-32
Twentieth Amendment, 33-34
Twenty-first Amendment, 33
Tyrannical form of government, 4

U

Unassembled examinations, 423-424
Unemployment compensation, 525-526
Unemployment insurance, see Unemployment compensation
Unicameral state legislature, evaluation of, 616-618
Unified command, problem of, 557
Uniformity requirement relating to federal taxation, 435-436
Unincorporated territories, 726-727
Union calendar of the House of Representatives, 355
Union of powers, 12-13
Unitary type of government, 10-11
United Nations Charter, 539

United Nations Organization, 539-540
United States Civil Service Commission, 417-420
United States Employment Service, 527
United States Housing Authority, 532
United States Office of Education, 530-531
United States Public Health Service, 529-530
United States Reports, 388
Urban precincts, 134-136
Urbanism Committee of the National Resources Committee, 499
Urbanization, problem of, in the United States, 752

V

Vacation leaves in federal employment, 430
Veteran preference, requirement of, in federal civil service, 425
Veterans Administration, 563-564
Veto power of the President, general character of, 277-278
pocket vetoes, 278-279
use of, 279
overriding of vetoes by Congress, 279-280
suggested changes in, 280-281
Veto power of state governors, 609-611
Vice-President, nomination of, 152
duties of, 227-228
social position of, 228
succession to the presidency, 228-229
Villages, 767-769
Virgin Islands, 732-733
Virginia Plan, 21
Visa Division of State Department, 543
Visas, 543
Vocational tests, use of, in public personnel administration, 423
Voters, qualifications required of, 101-102
Voting machines, 171-172
Voting, methods of, in Congress, 358-359
Voting, privilege and obligation of, 101-105

W

Wages and Hours Act of 1938, 513
Wages and Hours Division, 513
Wages and hours legislation of states, 695
Wagner Labor Relations Act, 513-514
War, scope of, powers of Congress and the President, 554-55
War Council, 558
War Food Administration, 572
War Labor Board, 510
War Manpower Commission, 571-572
War Production Board, 569
War Shipping Administration, 573-574
Ward leaders, 136
Wards, organization of political parties in, 136
Washington, District of Columbia, government and administration of, 735-738
Water power, 504
Weather Bureau, 469-470
Weights and measures, 483
Welfare, see Public welfare
Welfare departments, state, 691-693
county, 748-749
Whig party, 110-111
Whips, party, in Congress, 354
White House, 231
Wildlife conservation, 504
Witnesses in judicial proceedings, 84
Woman suffrage, 33-34
Women's Bureau, 512
Workmen's compensation, 695-696
Work relief, 526
Works Progress Administration, 526

Y

Yellow-dog contracts, 517
Young Democratic clubs, 124
Young Republican clubs, 124